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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 75

[Docket Number LS–01–07]

Increase in Fees for Voluntary Federal Seed Testing and Certification Services and Establishment of a Fee for Preliminary Test Reports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the hourly fee rate charged for voluntary Federal seed testing and certification services and establishing a fee for issuing preliminary test reports. The fee rate is increased to cover increases in salaries of Federal employees, rent, supplies, replacement equipment, and other increased Agency costs. A new fee is established to recover the cost of providing preliminary test reports.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC–East, Beltsville, Maryland 20725–2325; Telephone: (301) 504–9430, Fax: (301) 504–8098; e-mail: *Richard.Payne2@usda.gov.*

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

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

B. Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this action on small entities. It has determined that its provisions will not have a significant economic impact on a substantial number of small entities.

The AMS provides, under the authority of the Agricultural Marketing Act (AMA) of 1946, a voluntary, user-fee funded seed testing and certification service to approximately 65 businesses per year. Many of the users of the testing and certification services would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Over ninety-five percent of the samples tested in this program represent seed and grain scheduled for export. Grain is examined for the presence of specified weed and crop seeds upon request of the USDA's Grain Inspection, Packers and Stockyards Administration. A Federal Seed Analysis Certificate, containing purity, germination, noxious-weed seed examination, and other test results is issued upon completion of the testing. The Federal Seed Analysis Certificate is required documentation for shipments of seed and grain from the United States entering certain countries.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Without a fee increase, FY 2002 revenues for seed testing and certification services are projected at $137,000, costs are projected at $172,000, and the trust fund balance is projected to be $47,000 or 3.28 months of operating reserve. With a fee increase, FY 2002 revenues are projected at $160,000, costs are projected at $174,000, and the trust fund balance is projected to be $68,000 or 4.69 months of operating reserve.

This action will raise the hourly rate charged to users of the seed testing and certification services. This fee increase is necessary to offset increased program operating costs resulting from: (1) Salary increases for all Federal employees in 2001 and 2002, (2) increases in rent, (3) increases in costs of supplies needed for testing samples, and (4) purchases of replacement equipment needed to provide the service.

The AMS estimates that this rule will yield an additional $22,000 during FY 2002. The hourly rate for seed testing and certification services will increase by approximately 17 percent. The costs to entities will be proportional to their use of the service, so that costs are shared equitably by all users. The increase in costs to individual firms will be, on average, approximately $13.00 per Federal Seed Analysis Certificate issued. There will also be an increase of $1.90 for each duplicate certificate issued. In addition, this action will establish a fee of $13.00 to recover the cost of issuing preliminary test reports.

C. Civil Justice Reform

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

D. Paperwork Reduction Act

The information collection requirements that appear in part 75 of the regulations have been previously approved by OMB and assigned OMB Control Number 0581–0140 under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Background and Changes

The USDA is authorized by the AMA of 1946, as amended, 7 U.S.C. 1621 *et seq.*, to provide voluntary Federal seed testing and certification services to facilitate the orderly marketing of seed and grain and to enable consumers to obtain the quality of seed and grain they desire. The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the costs of services rendered.

The AMS regularly reviews programs to determine if fees are adequate and if costs are reasonable. This action will increase the hourly fee rate and charges for voluntary seed testing and certification services provided to the seed and grain industries to reflect the costs currently associated with providing the services.

A recent review of the current hourly fee rate, effective March 1, 2001,

revealed that anticipated revenue will not cover increased program costs. Without a fee increase, FY 2002 revenues for seed testing and certification services are projected at $137,000, costs are projected at $172,000, and the trust fund balance is projected to be $47,000 or 3.28 months of operating reserve. With a fee increase, FY 2002 revenues are projected at $160,000, costs are projected at $174,000, and the trust fund balance is projected to be $68,000 or 4.69 months of operating reserve.

The hourly fee for service is established by distributing the projected annual program operating costs over the estimated revenue hours of service provided to users of the service. Revenue hours include the time spent conducting tests, keeping sample logs, preparing Federal Seed Analysis Certificates and storing samples. As program operating costs continue to rise, the hourly fees must be adjusted to enable the program to remain financially self-supporting as required by law. Program operating costs include the salaries and fringe benefits of seed analysts, supervision, training, and all administrative costs of operating the program.

Employee salaries and benefits account for approximately 75 percent of the total budget. A general and locality salary increase of 3.81 percent for 2001 and 4.77 percent for 2002 for Federal employees involved in the seed testing and certification service became effective in January 2002 and will affect program costs.

This fee increase is necessary to offset increased program operating costs resulting from: (1) Salary increases for all Federal employees for 2002, (2) increases in rent, (3) increases in costs of supplies needed for testing samples, and (4) purchases of replacement equipment needed to provide the service.

In view of these increases in costs, the Agency is increasing the hourly rate charged to applicants for the service, including the issuance of Federal Seed Analysis Certificates from $44.40 to $52.00. The fee for issuing additional duplicate certificates is increasing from $11.10 to $13.00 and a fee of $13.00 is established for issuing preliminary reports.

This action will recover the costs associated with providing the voluntary testing service to the seed and grain industry. Although the user-fee increase will increase costs to individual firms, the cost for providing the seed testing and certification services will increase by an average of only $13.00 per Federal Seed Analysis Certificate and $1.90 for each duplicate certificate. It is estimated that the total revenue generated will increase by approximately $22,000 annually.

Summary of Public Comment

A notice of proposed rulemaking was published in the **Federal Register** (66 FR 53550) on October 23, 2001. No comments were received.

List of Subjects in 7 CFR Part 75

Administrative practice and procedure, Agricultural commodities, Reporting and recordkeeping requirements, Seeds, Vegetables.

For the reasons set forth in the preamble, 7 CFR part 75 is amended as follows:

PART 75—REGULATIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS

1. The authority citation for part 75 continues to read as follows:

Authority: 7 U.S.C. 1622 and 1624.

§ 75.41 [Amended]

2. In § 75.41, ''$44.40'' is removed and ''$52.00'' is added in its place.

3. In § 75.43, a new paragraph (c) is added to read as follows:

§ 75.43 Laboratory testing

* * * * *

(c) The charge for a preliminary report issued prior to completion of testing shall be $13.00 and billed in accordance with paragraph (a) of this section.

§ 75.47 [Amended]

4. In § 75.47, ''$11.10'' is removed and ''$13.00'' is added in its place.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6142 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 81

[Docket No. FV01–81–01 FR]

RIN 0581–AC03

Regulations Governing the California Prune/Plum (Tree Removal) Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures for a California Prune/Plum Diversion Program. The program is voluntary and consists wholly of tree removal. The program is being implemented under clause (3) of Section 32 of the Act of August 24, 1935, as amended. The program will help the California dried plum industry address its severe oversupply problems. The tree removal is expected to bring supplies into closer balance with market needs, and provide some relief to growers faced with excess supplies and acreage, and low prices.

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, D.C. 20250–0237; Telephone: 202–720–2491; Fax: 202–720–8938; or E-mail: *Ronald.Cioffi@usda.gov.*

Small businesses may request information on the diversion program by contacting Jay Guerber at the above address, telephone, fax, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be non-significant for the purposes of Executive Order 12866 by the Office of Management and Budget (OMB).

This final rule is effective January 2, 2002, to reflect the beginning of the application period specified in the proposed rule. Prompt notification of growers concerning their participation in the program and prompt tree removal are needed for the industry to achieve the expected program goals.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State and local governments and the private sector. Under section 202 of the UMRA, the Agricultural Marketing Service (AMS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State and local governments, in the aggregate, or by the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the AMS 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.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State and local governments or the private sector of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions, or which would otherwise impede its full implementation. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the reporting and recordkeeping provisions generated by this final rule were approved by the Office of Management and Budget (OMB). The Agricultural Marketing Service received emergency approval under OMB No. 0581–0201, California Prune/Plum Tree Removal Program—Section 32 (as amended 7 U.S.C. 612c). The emergency approval expires May 31, 2002. A regular submission will be sent to OMB requesting approval for three years.

Two forms are needed for the administration of the tree removal program. Growers wishing to participate in the program submitted an ''Application for Prune Tree Removal Program'' (FV–298). The proposed rule estimated that about 200 growers would submit applications. The application period ended January 31, 2002, and a total of 481 program applications have been submitted. It is estimated that each form took about 30 minutes to complete. Thus, the total burden for filing grower applications has increased from 100 to 240.5 hours. A total of 10 hours has been added to cover the recordkeeping burden on growers. Thus, the total burden hours for the program will be 250.5 hours. After removing their trees, growers will then have to sign a statement (FV–299) stating they wish payment. No additional burden has been estimated for this second form which would require only a signature. Finally, participants will be required to retain records pertaining to the tree removal program for two years after the year of removal.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V published at 48 FR 29115 (June 24, 1983).

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Authority for Tree Removal Program

The program is intended to reestablish prune/plum farmers' purchasing power. Programs to reestablish farmers' purchasing power are authorized by clause (3) of Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) (''Section 32''). This clause of Section 32 authorizes USDA to ''* * * reestablish farmers'' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption.'' Section 32 also authorizes USDA to use Section 32 funds ''* * * at such times, and in such manner, and in such amounts, as USDA finds will effectuate substantial accomplishments of any one or more of the purposes of this section.'' Furthermore, ''Determinations by USDA as to what constitutes * * * normal production for domestic consumption shall be final.''

Need for the Tree Removal Program

Production of prune/plums for marketing as dried plums is concentrated in California. Production of dried plums during the 2000 season increased for the second consecutive year, to nearly 219,000 tons (natural condition).

Changes in growing conditions have substantially altered the production outlook for 2001. Production was originally estimated to be 220,000 tons. However, due to a lighter crop-set in major producing areas, as well as freezing temperatures and hail, production for the 2001 crop year is now expected to range between 140,000 and 155,000 tons. This smaller crop somewhat alleviates the oversupply situation, but does not represent a change in the longer-term oversupply situation.

When the crop was estimated at 220,000 tons in the spring of 2001, the industry discussed the use of volume control authorized under the Federal marketing order. In addition, carryin inventories from the 2000 crop year were reported at 100,829 tons. With this level of inventories and crop, the total available supply would have been 320,829 tons.

With this estimated crop size, establishing a 48 percent reserve (52 percent free tonnage) was discussed. The industry does not have a history of establishing reserve percentages, and reserve percentages were last used in the 1970's. The fact that the marketing order committee even considered use of the reserve provisions indicates the gravity with which the industry views the oversupply problem. The use of marketing order reserve provisions is intended to help industries deal with surplus production and facilitate orderly marketing of their crops.

The Prune Bargaining Association (PBA) represents about 40 percent of the independent growers and negotiates a selling price for its members. With the large anticipated crop for the 2001 season and the large carryin inventory, the PBA had difficulty establishing a price with handlers. Even with the smaller crop of 155,000 tons, the PBA could only negotiate a price of $763 per ton. This compares to $845 for the 2000 season, or a decrease of 9.7 percent. Although the price has been set, not all handlers have signed the agreement. Even this lower price may be too high in the eyes of the non-signing handlers, given current supply conditions.

The smaller crop size for 2001 has provided the industry some relief in reducing total available supplies. However, there are still a large number of nonbearing acres (15,000) that will become productive over the next six years. In addition, there are many acres with older, less productive trees which could be replanted in the near future. A tree removal program will assist growers who are facing difficult replanting decisions by allowing them to receive funds for the removal of trees and, at the same time, prohibit those growers from replanting prune/plums in those orchards. Prune/plum growers also tend to be producers of almonds, walnuts, and cling peaches. Plantings of these crops could increase in future years as growers remove prune/plum acreage.

Bearing acreage expanded to a record 86,000 acres during the 2000 season and the average yield increased 19 percent. Yields are anticipated to increase further as more densely planted acres

become productive over the next several years.

Nonbearing acreage, which is an indicator of future production levels, increased to an all-time high of 26,000 acres in 1998. This represented a 22-percent increase in the productive capacity of the industry. The non-bearing acres are more densely planted than in previous years which results in a higher yield per acre.

The dried plum industry faces a long-run surplus situation. For the 2000 crop year, bearing acres were 86,000 and non-bearing acres were 15,000. Bearing acres could exceed 100,000 in the near future. With yields in excess of 2.0 tons per acre, production could be expected to be above 200,000 tons in many crop years.

Total domestic shipments exceeded 100,000 tons for six seasons in the late 1980's and early 1990's, but have declined from a high of 108,085 processed tons in 1996. Per capita consumption has been steadily declining since 1980. Export shipments have been stagnant. As a result of these domestic and export trends, total shipments have never exceeded 190,000 processed tons.

Until recently, export shipments were a source of growth in the dried plum industry. In 2000, exports represented 47 percent of total shipments. However, the strong dollar and the downturn in the economies in Asia and Europe have significantly slowed export sales.

Due to the significant supply-demand imbalance, the industry anticipates several years in which the expected annual carryin inventories will exceed the industry's desirable carryin level of approximately 40,000 tons. If dried plum markets continue to be over-supplied with product, grower prices and grower relations with packers will deteriorate significantly. Even with the lower production estimate for the 2001 crop year, the carryout inventory is expected to exceed 76,000 tons.

High prices from 1992 through 1995, and a more balanced supply and demand situation, helped to stimulate investments in new acreage. This additional acreage came from a variety of sources, mainly rice and pasture land. Intensifying the anticipated surplus situation is the fact that new acres are more productive than existing acres, which causes output to grow more rapidly in proportion to acreage growth.

It takes dried plum trees 6 years to become fully productive. Many of the costs of producing plum trees are ''sunk,'' making it difficult to reverse decisions once those acres are planted. Because supply is slow to adjust to changing market conditions, the industry anticipates many years of production outpacing demand, resulting in continued distressed grower conditions.

From 1980 through 2000, the total cost per ton of producing dried plums exceeded the growers' season-average prices. Similarly, the total cost per acre exceeded revenue per acre.

However, it is also important to consider variable cost. In recent years, the total revenue per ton and per acre has been greater than the total variable cost per ton and per acre. Prices and revenues greater than variable costs provide some indication of why a dried plum producer continues to harvest and process a crop despite losing money.

Tree Removal Diversion Program

The industry is requesting a voluntary tree removal program estimated to cost $17 million. The industry would like to remove a minimum of 20,000 bearing acres of prune/plum trees. With many of the current bearing acres reaching the age where replanting would be considered, the industry is trying to provide an incentive to growers to remove older trees, while ensuring that those orchards are not replanted with prune/plum trees.

To be eligible for the tree removal program, orchards must have a minimum yield of 1.5 tons of dried prune/plums per net-planted acre. With a minimum threshold yield of 1.5 tons of dried prune/plums per net-planted acre, sufficient land would be enrolled in the tree removal program to reduce annual production by approximately 30,000 tons. A net-planted acre is the actual acreage planted with prune/plum trees.

The industry has estimated that it will take $8 to $9 per tree to induce growers to participate in such a program. It is believed that financial institutions that provide growers operating funds would not allow them to participate if the payment per tree is below this level.

This type of one-time decrease in production would more closely align supply with demand, while assuring an adequate supply. This would allow the industry to concentrate their efforts on rebuilding demand for future years.

The industry has already undertaken a smaller-scale tree removal program. However, to finance this grower-initiated tree pull program, grower assessments for promotion were reduced from $50 per ton to $30 per ton. Less money is available for promotion, but growers felt that this re-direction of funds was necessary to help address the oversupply situation.

The tree removal program would be administered through the Agricultural Marketing Service (AMS) and the Prune Marketing Committee (Committee). The Committee is an administrative agency appointed by AMS to locally administer the terms of Federal Marketing Order No. 993.

Any prune/plum producer wishing to participate in the program filed an application with the Committee. The application period began January 2, and ended January 31, 2002.

Each applicant provided information needed by the Committee to operate the program. This included, for example, the number of trees the applicant wished to remove and their location. The applicant also will have to certify that he/she has not contracted to sell the land or otherwise already arranged to have the trees removed for commercial purposes (*e.g.,* shopping centers, housing developments, resorts, etc.). Applicants should note that under the regulations, they bear responsibility for ensuring that prune/plum trees are not replanted, whether by themselves or by successors to the land, until after June 30, 2004, and that if they fail to prevent such replanting, they must refund any USDA payment, with interest, made in connection with the tree removal program. The Committee will review each application for completeness, and make reasonable efforts to contact growers to obtain any missing information.

In order to be eligible to participate in the program, the orchards or blocks of trees being removed from production would have to have a minimum yield of 1.5 dried tons per net-planted acre during either the 1999 or 2000 crop years. A net-planted acre is the actual acreage planted with prune/plum trees. This means that abandoned orchards will not be eligible for participation. USDA considered establishing the minimum qualifying yield at 2.2 tons per acre, but determined that at that level, too many orchards would be ineligible for the program. A lower yield would not reduce production as much as the industry desires.

USDA has allocated $17 million for this program, including administrative costs. Applications would be approved until the level of available funding was reached. Each participating grower will have to then remove trees from production by June 30, 2002. Growers will be paid $8.50 for each eligible tree removed. This level of payment is deemed necessary for a significant number of growers to participate in the tree-removal program. It would cover most of the costs of removing the trees (bulldozing, cutting, etc.), and preparing the land for other uses. The costs vary depending on the number of acres

removed. Some cost savings may accrue with larger acreage removals.

Estimated costs for removing, piling, chipping, or other disposal methods range from $142–$225 per acre or from $1.29–$2.05 per tree. Costs for removing the roots and other debris are expected to range from $163–$289 per acre or from $1.48–$2.63 per tree. Leveling of the ground is expected to cost $161–$401 per acre or $1.46–$3.65 per tree. Fumigation of the tree holes is expected to cost $550 per acre or $5.00 per tree. This would amount to $9.23–$13.33 for each tree removed. The $8.50 payment under the program is expected to offset most of the grower's costs, but should be sufficient to encourage growers to participate in the program.

Each grower participating in the program will have to agree not to replant prune/plum trees on land cleared under this program through June 30, 2004. Because it takes new acres at least six years to be productive, acreage participating in the tree-removal program would not return to commercial prune/plum production for at least eight years and possibly nine years because plantings occur in January and February. Alternative crops could be planted. Additionally, the current economic conditions in the industry, specifically weak demand, reduced per capita consumption, stagnant domestic shipments and exports, and declining grower prices and revenues, would appear to limit the incentives for replanting acreage to prune/plum trees.

Final Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 1,250 producers of dried plums in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000. An estimated 32 producers, or less than 13 percent of the 1,250 total producers, would be considered large producers with annual incomes over $750,000.

This final rule establishes a tree removal diversion program for California dried prune/plums. Authority for the program is provided in clause (3) of Section 32 of the act of August 24, 1935, as amended.

Participation in the diversion program is strictly voluntary, so individual producers, both small and large, can weigh the benefits and costs for their own operations before deciding whether to participate in the program.

Economic Assessment of the Tree Removal Diversion Program

To assess the impact a tree removal program would have on prices growers receive for their product, impacts on grower prices and inventories with a tree removal program and without a tree removal program were estimated. An econometric model was developed for the purpose of estimating nominal season average grower prices under both scenarios.

A tree removal program will directly reduce the number of bearing acres, but there will not be an impact until the 2002 crop year since harvesting of the 2001 crop is completed.

In 2000, there were still 15,000 non-bearing acres. The industry has indicated that no additional plantings of prune/plum trees for acreage expansion are occurring at this time. Therefore, after the 15,000 non-bearing acres come into production, the productive capacity of the industry is assumed to stay constant.

The tree removal analysis assumes that 20,000 acres are removed through the tree removal program, while 3,000 of the non-bearing acres become productive in 2002. This results in bearing acres being reduced from 86,000 in 2001 to 69,000 in 2002. Bearing acres increase by 3,000 acres in each of the subsequent years until 2007, rising to 72,000 in 2003, 75,000 in 2004, 78,000 in 2005, and 81,000 in 2006 and 2007.

At the time the analysis was performed, production for the 2001 crop year was estimated by the Department's National Agricultural Statistics Service (NASS) at 155,000 natural condition tons. Marketable production is generally 93 percent of total production, yielding an estimated 144,500 marketable tons for 2001. Carryin inventory for the 2001 crop year was computed by the marketing order committee at 100,829 tons as of June 30, 2001. These figures are used to derive an estimated total available supply of 244,979 tons for 2001. This level of supply accounts for the fact that a number of voluntary measures have been taken by the industry to reduce the level of production for the 2001 crop year, including crop abandonment and cutbacks on cultural practices.

Shipments are estimated to grow by 1 percent annually, which results in estimated total shipments of 165,932 tons for 2001. The one percent growth in shipments reflects decreased government surplus purchases and possible retail price effects.

For 2002, total shipments are estimated at 167,591 tons and the carryin inventory is estimated at 79,047 tons. With the tree removal diversion program reducing bearing acres to 69,000 for the 2002 crop year, total available supply is estimated at 257,440 tons. It should be noted that through 2001, carryin inventory does not exactly match the prior year's difference between total available supply and total shipments. This is due to shrinkage and other minor adjustments computed by the Federal marketing order committee. However, for this analysis, the estimated carryin from 2002 to 2007 is estimated to be the exact difference between estimated total supply and estimated shipments from the prior year.

The analysis also assumes that yields will fluctuate up and down, in keeping with the known ''alternate bearing'' tendency of prune/plum trees. Estimated production, computed by multiplying acreage times yield, fluctuates accordingly.

As carryin inventories are reduced, the total available supply moderates for crop years 2003 through 2007, relative to the situation without a tree removal program. This results in season average grower prices ranging from $845 to $1,084 during that same time span. It should be noted that the margin of error for these estimates becomes very large for future crop years.

Even though season-average grower prices per ton rise under the tree removal program, all product produced is not necessarily of marketable quantity. Costs are incurred on all the production, but revenue is received only on product actually marketed. Thus, the economic effect of the tree removal program on a per acre basis is to dramatically reduce losses and bring producer returns closer to a break-even level. With losses still being incurred by producers, there should be only a limited incentive to further expand production as a result of the tree removal program. It will remain for growers to control costs and to expand demand to ensure their longer-term economic stability.

Grower prices are a small component of the finished dried plum product and are not closely associated with movements in retail prices. However, the increases in grower prices estimated for crop years 2003 through 2007 may have an impact on retail prices. The extent of any retail price increases would depend on processor and retailer

margins and the pricing and availability of substitute products, such as raisins or other dried fruits. It should be noted that dried plum prices are estimated to increase with or without a tree removal program, but the magnitude of the grower price increase is greater with the program.

Without a tree removal program, bearing acres are estimated to increase to 89,000 by the 2002 crop year. Production would be in excess of 200,000 tons, resulting in carryout inventories in excess of 100,000 tons in 2002. In addition, under this scenario, 2002 grower prices are estimated at $789 per ton. With high inventories and low grower prices, market forces are assumed to induce growers to remove less productive acres and the number of bearing acres is estimated to decline from 89,000 in 2002 to 84,000 in 2007. Even with the decline in bearing acres, production and inventories remain excessive from 2002 through 2007. However, in 2007, carryout inventories fall to an estimated 6,592 tons.

Under both scenarios, grower prices increase and inventories become more manageable. The difference is that, under a tree removal program, adjustments to inventories and prices occur more rapidly. This would accelerate benefits to growers, who would otherwise be struggling to break even in a depressed market, until market forces brought about a slow correction.

In addition to the direct impact on growers' prices and revenues that a tree removal program would have, there are also indirect impacts. A tree removal program will assist in decreasing burdensome (undesirable) carryout inventories. Without a tree removal program, large quantities of dried plums held in packers' inventories prevent grower pools from being closed, which delays grower payments. Large amounts of undesirable inventory lead to strained grower-packer relations. In an attempt to sell the excessive inventories, packers reduce f.o.b. prices, which in turn leads to market share battles and lower prices being passed back to producers. A more balanced supply and demand situation allows growers and packers to jointly continue developing markets in ways that benefit the entire industry.

Industry Self-Help Initiatives

The California dried plum industry has undertaken an initiative to reduce acreage and production. The industry implemented a pre-harvest tree removal program during the 2001 crop year. The industry collected about $3 million to support this effort by reducing assessments under their California State marketing order from $50 to $30 a ton. The $20 per ton reduced assessment was used to support the industry tree removal program.

The program was successful in removing about 2,500 acres. The effects of this industry self-help diversion are included in the analysis of the Federal program.

The industry also has taken measures to stimulate demand, including: (1) The development of new products and new uses for dried plums; (2) marketing efforts to attract younger customers; and (3) domestic and export market promotion programs under the California State marketing order and the Foreign Agricultural Service's Marketing Assistance Program (MAP). One of the most recent initiatives involved securing approval from the Food and Drug Administration to change the name ''dried prunes'' to ''dried plums.'' This has allowed the industry to redirect its generic marketing efforts to attract a new generation of consumers.

Benefits of the Program

The economic assessment of the tree removal program indicates that it is expected to benefit producers, particularly small, under-capitalized producers, as well as the entire dried plum industry, including packers. The per ton sales price is projected to increase from 2002–2007, reducing losses and moving producer returns closer to break-even levels. The benefit to producers from reduced losses is projected to total approximately $93 million over the six-year period 2002–2007. The benefits over the six-year period would average nearly $15.5 million annually. The proposed rule incorrectly indicated that the benefit to producers from reduced losses would be about $128 million and that the benefits over the six-year period would average nearly $24 million annually.

Costs of the Program

The major cost of the program would be the payment to producers for removing their prune/plum trees. A total of $17 million, less Committee administrative costs, is available for the tree removal program. Committee administrative costs for reviewing applications and verifying tree removals are expected to be about $125,000. Major expense categories for administration include costs for salaries and benefits; vehicle rental and maintenance; insurance and overhead; and supplies.

Total producer costs associated with filing applications to participate in the program and maintaining records for the period specified after tree removal are expected to be about $2,500. These costs were estimated to be $1,000 in the proposed rule. The increased producer cost estimate is due to the increased number of applications and the addition of 10 hours to cover grower recordkeeping. The number of applications received was estimated to be 200 in the proposed rule and the actual number received was 481.

Overall Assessment

Payments made through this program could help prune/plum producers by addressing the oversupply problem that is adversely affecting the dried plum industry. A tree removal program is expected to allow supply to be adjusted downward more quickly. Market forces will also result in supplies being reduced, but this adjustment may occur more slowly, likely resulting in a number of farm failures. The tree-removal program may be beneficial in reducing the risk of loan default for lenders that financed prune/plum growers. This program will likely help small, under-capitalized producers to stay in business. These producers are often efficient, but do not have adequate resources to continue to operate given the current depressed conditions within their industry.

Reducing the level of unprofitability also should provide opportunities for the industry to engage in additional demand-enhancing activities, especially directed at the domestic market. Even a moderate increase in domestic per capita consumption will have a significant, positive impact on grower returns.

Costs for the program would include the $17 million to be paid growers and to the Committee for administration costs under the Federal tree removal diversion program. Additionally, growers would incur costs totaling about $2,500 to comply with the filing and record-keeping requirements of the program.

Benefits to growers under the tree removal program could total approximately $93 million. The first step in this calculation is to multiply marketable production for each of the six years (2002–2007) times the difference between grower price and variable cost, and to sum those figures. This is done for each of the two scenarios (with and without a tree pull program). The $93 million difference between those figures represents a conservative (low-end) estimate of program benefits resulting from reduced grower losses. This cost calculation assumes that the acreage on which trees are removed remains idle, and that

growers must therefore absorb all fixed costs on that acreage. To the extent that the land is put to other productive uses, growers would not be absorbing all fixed costs of producing prune/plums, and grower benefits would be higher.

If growers are earning more, it follows that processors and/or retailers beyond the farmgate would pay higher raw product costs to obtain the prune/plums from the growers. These higher costs could be passed on to consumers through higher retail prices or could be absorbed as reduced operating margins for other affected sectors of the economy—processors, wholesalers, or retailers. An estimate of these costs is obtained by multiplying the estimated grower price changes over each of the six years (2002–2007) times annual shipments (an average of the prune/plum shipments with the tree pull program and without the tree pull program). That figure, summed over the six years, is approximately $68 million. However, this $68 million cost is likely overstated due to the fact that grower prices are currently less than the cost of production. Adjustments in retail prices, and retailer and processor margins, are anticipated to change with or without a tree removal program.

Another cost of the tree removal program is the reduced economic activity due to the growers purchasing fewer inputs (labor, chemicals, etc.) from the reduction in prune/plum acres managed and harvested. Input producers (laborers and agricultural chemical firms) would see less revenue because of lowered purchases of these inputs. To the extent that acreage removed is replanted in other crops, those costs could be somewhat offset by purchases of inputs to produce the alternative crops. This cost of the tree removal program is difficult to quantify and is not included in this analysis.

Savings over the same period of up to $60 million could be realized through reduced surplus removal purchases of dried plum products for Federal feeding programs. These government savings would be used to purchase other commodities for use in school and other food assistance programs.

Historically, the dried plum industry has not relied heavily on the Federal surplus removal program. Since the 1991 season, the industry has requested and received surplus removal purchases in only 4 of the past 11 seasons. Should supplies be reduced as expected through the tree removal program, it would be unlikely that the dried plum industry would seek government assistance in the form of surplus removal purchases for several years to come.

Conclusion

Based on this information, USDA has determined that there is a surplus of dried plums, and that reestablishment of producers' purchasing power would be encouraged by using Section 32 funds to reduce supplies under a Diversion Program for Dried Plums/Prunes consisting wholly of a tree-removal program. USDA has further determined that this program is expected to be a long-term solution to the oversupply situation that exists in the California dried plum industry, and that it will provide relief to growers.

Notice of this action was published in the **Federal Register** on December 17, 2001. Interested persons were invited to submit comments until January 16, 2002. Eleven comments were received. Most of them supported the tree removal program and expressed appreciation to USDA for proposing to put the program in place. Other commenters requested changes or clarifications to the eligibility, removal, and replanting requirements, and several suggested alternatives to tree removal. One commenter did not support the proposed program.

One commenter suggested that USDA should buy the surplus production and distribute the dried plums to needy persons in the United States and outside the United States. Another suggested that USDA should arrange to have the trees removed and shipped to other countries so they could be replanted and possibly provide food for needy people. USDA generally purchases commodities requested by users in quantities which can be distributed quickly. Available storage space is limited and storage is quite expensive. The tree removal program, on the other hand, is designed to help the California dried plum industry by bringing supplies more closely in line with market needs, and by providing more lasting benefits. Consumers should benefit through a stabilized market and reduced fluctuation in supplies and prices. The idea of shipping trees as a gift to needy countries with compatible climates and growing conditions has merit. However, the cost of removal, packaging of the trees with their roots intact, and the shipment to various countries would be prohibitive and the survival rate of the trees would probably be quite low.

Six comments were received from individuals requesting changes or clarifications to the eligibility, replanting, and tree removal requirements of the program.

Comments from two representatives of the California raisin industry requested USDA to incorporate a provision into the tree removal program specifying that each grower participating in the tree removal program must agree not to replant raisin grape vines on land cleared under the tree removal program through June 30, 2004, to prevent harming the raisin industry. A prune/plum grower from the Santa Clara Valley suggested that the yield requirements be reduced from 1.5 to 1.2 tons per acre to recognize that yields in the Santa Clara Valley are traditionally lower than the yields in the Central Valley of California, where most of the prune/plums are grown.

Adding prohibitions on what could or could not be planted on land cleared under this program goes beyond the intended scope of the program and does not appear justified at this time. The limits placed on producers with respect to the trees involved in this program reflect that at a minimum prune/plum producers should not be allowed to accept the payment and, in the near future, recommit the same ground to prune/plum trees.

The program will assure that removal is not part of the normal process of tree replacement. The program directly affects land identified by the producer as prime prune/plum production land. Market conditions, moreover, would govern what producers will or will not plant. Producers are not likely to plant a crop which can be expected to be in surplus. In the end, USDA's desire was to have this program be as simple as possible.

With respect to changes in the yield per acre limit, the suggestion was not adopted because USDA desires program dollars to be used for removing higher yielding trees. The program is designed to benefit the industry by stabilizing supplies and prices of dried plums.

Two comments were received from the Executive Director of the Prune Marketing Committee. The commenter requested that an exception be made to the eligibility requirements specifying that the trees removed must have yielded at least 1.5 tons per net-planted acre during the 1999 or 2000 crop years. The commenter reported that some producers might not have the required production information because the producers did not harvest, or only harvested a portion of, their crops during the 1999 or 2000 crop years. The commenter indicated that these producers' crops generated little or no revenue because their handlers either pro-rated the quantity of dried plums they purchased or made no purchases of dried plums during 1999 or 2000.

The commenter further indicated that these producers should not be further

disadvantaged by declaring them ineligible to participate because they were not able to sell any of their fruit or only some of their fruit during the 1999 or 2000 crop years. The commenter requested that these producers be allowed to qualify if they sold production during the 2001 or 1998 crop years.

This comment was not adopted because expanding the eligibility base period could result in some growers gaining an advantage over other growers. While some producers could fare better than other producers under a broader base period, the point of the program is to achieve an overall reduction in the level of the commodity available for market. The simplest and most assured manner for achieving this goal is to limit producer eligibility to production from the 1999 or 2000 crop years as was proposed. Moreover, limiting eligibility to these two crop years will provide some measure of assurance of uniform treatment among producers and should help the public's understanding of the program.

This commenter also questioned a statement in the supplementary information section of the proposed rule that appeared on page 64920, first column, last paragraph of the December 17, 2001, issue of the **Federal Register**. The statement specified that the applicant would have to certify that he/she has not contracted to sell the land or otherwise already arranged to have the trees removed. The commenter indicated that the language implies that a grower cannot sell a prune orchard to another grower who agrees not to replant trees until after June 30, 2004, and could also exclude a grower who is in the process of buying a prune orchard.

It was not the intent of USDA to prevent participants from selling their orchards should they so choose after enrollment in the program. However, the owner who accepts the payment, or is the party of record for program purposes, will still be liable for ensuring that the two-year planting prohibition is followed even though the participant no longer owns the land. The non-planting promise is a guarantee by the participant that no one (not just the participant) will plant the property with prune/plum trees during the two-year non-planting period. Further, it was and remained the intent of USDA that only those persons who are the current owners of the property, and have not already contracted to sell the property or destroy the trees could participate. This is to avoid conflict where title to the property is already in transition—and where the new buyer may be expecting the trees to stay.

The certification that producer applicants are required to sign, guarantees that they have not made prior arrangements to sell the land or remove the trees for commercial purposes. That is, they guarantee that the land is not going to be commercially developed for shopping centers, housing developments, vacation resorts, or similar such purposes. It was determined that including such non-agricultural land in the program would not serve the purposes of the program.

The Chairman of the Prune Marketing Committee suggested that the application period be extended for an additional 15 to 30 days to give producers more time to apply. The commenter indicated that this would be extremely helpful to the industry in obtaining as many participants as possible. This commenter subsequently withdrew the request. An extension of the application period was considered but was found not to be necessary in light of producer program interest and the fact that no material changes were found appropriate or needed based on the comments received. Had a need for material change in the program been found warranted and appropriate based on the comments received, an extension or other action would have be taken to allow for the adjustment. Deadlines were set out clearly in the proposed rule and the program was widely publicized in the industry.

Another commenter raised questions regarding the definition of the term ''removal'' in § 81.3. In the proposed rule, the term was defined to mean that the prune/plum trees are no longer standing and capable of producing a crop. The provision states that the producer can accomplish removal by any means the producer desires. The commenter contends that grafting other fruit stock to a prune/plum tree should be considered removal under the proposed definition. The commenter states that the prune/plum trees would no longer be standing, nor will they be able to produce a crop of prune/plums. In fact, no part of the prune/plum tree would be left.

This procedure would advance the likelihood of the production of other crops, and it is preferred that the program be neutral in that respect. Also, this would add unneeded complication to the program. Given that producer interest in the program is very high without this allowance, there does not appear to be any need to increase the attractiveness of the program. Moreover, the intent of the program is to remove prune/plum trees and the roots of those trees. Grafting is not consistent with the intent of the program. Therefore, the definition of removal has been clarified to exclude grafting as a method of removal and to specify that ''removal'' means that the prune/plum trees are no longer standing and capable of producing a crop, and that the roots of trees have been removed.

A final commenter indicated that he was opposed to the program. He stated that the industry got itself into the oversupply situation and should not look to the government to get itself out of it. This program is a valid exercise of the authority granted USDA under section 32. USDA is monitoring this program very closely to ensure that program objectives are attained. The majority of the industry supports this program having considered a number of less effective alternatives to balance supplies and demand.

All of the comments received have been thoroughly reviewed. Some adjustments have been made in the rule for clarity and to assure accomplishment of the goals of the program as set out in the proposed rule and as set out in this final rule.

After consideration of all relevant matter presented, including the comments received, and other information, it is found that this final rule, as hereinafter set forth, will tend to effectuate the policy of 7 U.S.C. 612c.

Pursuant to 5 U.S.C. 553, it is also found that no good cause existed for delaying the effective date of this rule. Such delay would be contrary to the public interest because prune/plum producers needed to know immediately whether they would be accepted into the program by February 14, 2002. Eligible producers wanted to begin removing the prune/plum trees. In addition, further delay could have jeopardized the ability of the program to accomplish its goal of reducing the supply of dried plums. As a technical matter, the rule has been made retroactive to January 2, 2002, for the reasons given. In fact, however, no obligations were undertaken until February 14, 2002. If for any reason January 2, 2002, is considered inappropriate as an effective date, then the effective date will be considered February 14, 2002, which was well after the close of the comment period. Program issues were open until that date.

List of Subjects in 7 CFR Part 81

Administrative practice and procedures, Agriculture, Prunes, Reporting and record keeping requirements, Surplus agricultural commodities.

For the reasons set forth in the preamble, Title 7, Subtitle B, Chapter I is amended as follows:

1. In Subtitle B, Chapter I, part 81 is added to read as follows:

PART 81—PRUNE/DRIED PLUM DIVERSION PROGRAM

Sec.
81.1 Applicability.
81.2 Administration.
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Authority: 7 U.S.C. 612c.

§ 81.1 Applicability.

Pursuant to the authority conferred by Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) (Section 32), the Secretary of Agriculture will make payment to California producers who divert prune/plums by removing trees on which the fruit is produced in accordance with the terms and conditions set forth herein.

§ 81.2 Administration.

The program will be administered under the direction and supervision of the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), and will be implemented by the Prune Marketing Committee (Committee). The Committee, or its authorized representatives, does not have authority to modify or waive any of the provisions of this subpart. Such power shall rest solely with the Administrator of AMS, or delegatee. The Administator or delegatee, in the Administrator's or delegatee's sole discretion can modify deadlines or other conditions, as needed or appropriate to serve the goals of the program. In all cases, payments under this part are subject to the availability of funds.

§ 81.3 Definitions.

(a) *Administrator* means the Administrator of AMS.

(b) *AMS* means the Agricultural Marketing Service of the U.S. Department of Agriculture.

(c) *Application* means ''Application for Prune Tree Removal Program.''

(d) *Committee* means the Prune Marketing Committee established by the Secretary of Agriculture to locally administer Federal Marketing Order No. 993 (7 CFR Part 993), regulating the handling of dried prunes produced in California.

(e) *Diversion* means the removal of prune-plum trees after approval of applications by the Committee through June 30, 2002.

(f) *Producer* means an individual, partnership, association, or corporation in the State of California who grows prune/plums that are dehydrated into dried plums for market.

(g) *Removal* means that the prune-plum trees are no longer standing and capable of producing a crop, and the roots of the trees have been removed. The producer can accomplish removal by any means the producer desires. Grafting another type of tree to the rootstock remaining after removing the prune/plum tree would not qualify as removal under this program.

§ 81.4 Length of program.

Producers diverting prune/plums by removing prune-plum trees must complete the diversion no later than June 30, 2002.

§ 81.5 General requirements.

(a) To be eligible for this program, the trees to be removed must have yielded at least 1.5 tons of dried prune/plums per net-planted acre during the 1999 or 2000 crop year. A net-planted acre is the actual acreage planted with prune-plum trees. Abandoned orchards and dead trees will not qualify. In new orchards diverted, qualifying trees must be at least 5 years of age (6th leaf), contain at least two scaffolds, and be capable of producing at least 1.5 tons per net-planted acre. The block of trees for removal must be easily definable by separations from other blocks and contain at least 1,000 eligible trees or comprise an entire orchard.

(b) Any grower participating in this program must agree not to replant prune-plum trees on the land cleared under this program through June 30, 2004. Participants bear responsibility for ensuring that trees are not replanted, whether by themselves, or by successors to the land, or by others, until after June 30, 2004. If trees are replanted before June 30, 2004, by any persons, participants must refund any USDA payment, with interest, made in connection with this tree removal program.

§ 81.6 Rate of payment; total payments.

(a) The rate of payment for each eligible prune-plum tree removed will be $8.50 per tree.

(b) Payment under paragraph (a) of this section will be made after tree removal has been verified by the staff of the Committee.

(c) The $8.50 per tree payment shall be the total payment. USDA will make no other payment with respect to such removals. The producer will be responsible for arranging, requesting, and paying for the tree removal in the specified orchard blocks or orchard(s), as the case may be.

(d) Total payments under this program are limited to no more than $17,000,000. No additional expenditures shall be made, unless the Administrator or delegatee in their sole and exclusive discretion shall, in writing, declare otherwise.

§ 81.7 Eligibility for payment.

(a) If total applications for payment do not exceed $17,000,000, less administration costs, payments will be made under this program to any eligible producer of prune/plums who complies with the requirements in § 81.8 and all other terms and conditions in this part.

(b) If applications for participation in the program authorized by this part exceed $17,000,000, less administration costs, the Committee will approve the applications (subject to the requirements in § 81.8) in the order in which the completed applications are received in the Committee office up to the funding limit of $17,000,000, less administration costs, for the program. Any additional applications will be denied.

(c) The Administrator or his delegatee may set other conditions for payment, in addition to those provided for in this part, to the extent necessary to accomplish the goals of the program.

§ 81.8 Application and approval for participation.

(a) Applications will be reviewed for program compliance and approved or disapproved by Committee office personnel.

(b) Applications for participation in the Prune-Plum Diversion Program can be obtained from the Committee office at 3841 North Freeway Boulevard, Suite 120, Sacramento, California 95834; telephone (916) 565–6235.

(c) Any producer desiring to participate in the prune-plum diversion program must have filed an application with the Committee by January 31,

2002. The application shall be accompanied by a copy of any two of the following four documents: Plat Map from the County Hall of Records; Irrigation Tax Bill; County Property Tax Bill; or any other documents containing an Assessor's Parcel Number. Such application shall include at least the following information:

(1) The name, address, telephone number and tax identification number/social security number of the producer;

(2) The location and size of the production unit to be diverted;

(3) The prune/plum production from the orchard or portion of the orchard to be diverted during the 1999–2000 and 2000–2001 seasons;

(4) A statement that all persons with an equity interest in the prune/plums in the production unit to be diverted consent to the filing of the application. That is, the statement must show that the applicant has clear title to the property in question, and/or as needed, the statement must show an agreement to participate in the tree removal program from all lien or mortgage holders, and/or land owners, lessors, or similar parties with an interest in the property to the extent demanded by AMS or to the extent that such persons could object to the tree removal. However, obtaining such assent shall be the responsibility of the applicant who shall alone bear any responsibilities which may extend to third parties;

(5) A statement that the applicant agrees to comply with all of the regulations established for the prune/plum diversion program;

(6) A certification that the information contained in the application is true and correct;

(7) The year that the unit of prune/plums was planted;

(8) An identification of the handler(s) who received the prune/plums from the producer in the last two years.

(d) After the Committee receives the producer applications, it shall review them to determine whether all the required information has been provided and that the information appears reliable.

(e) As previously indicated, if the number of trees to be removed in such applications, multiplied by $8.50 per tree, exceeds the amount of funds available for the diversion program, each grower's application will be considered in the order in which they are received at the Committee office. AMS may reject any application for any reason, and its decisions are final.

(f) After the application reviews and confirmation of eligible trees are completed, the Committee shall notify the applicant, in writing, as to whether or not the application has been approved and the number of trees approved for payment after removal. If an application is not approved, the notification shall specify the reason(s) for disapproval. AMS shall be the final arbiter of which applications may be approved or rejected, and the final arbiter of any appeal.

§ 81.9 Inspection and certification of diversion.

When the removal of the prune-plum trees is complete, the producer(s) will notify the Committee on a form provided by the Committee. The Committee will certify that the trees approved for removal from the block or orchard, as the case may be, have been removed, and notify AMS.

§ 81.10 Claim for payment.

(a) To obtain payment for the trees removed, the producer must submit to the Committee by June 30, 2002, a completed form provided by the Committee. Such form shall include the Committee's certification that the qualifying trees from the blocks or orchards have been removed. If all other conditions for payment are met, AMS will then issue a check to the producer in the amount of $8.50 per eligible tree removed.

§ 81.11 Compliance with program provisions.

If USDA on its own, or on the advice of the Committee, determines that any provision of this part have not been complied with by the producer, the producer will not be entitled to diversion payments in connection with tree removal. If a producer does not comply with the terms of this part, including the requirement specified in § 81.5(b), the producer must refund, with interest, any USDA payment made in connection with such tree removal, and will also be liable to USDA for any other damages incurred as a result of such failure. The Committee or USDA may deny any producer the right to participate in this program or the right to receive or retain payments in connection with any diversion previously made under this program, or both, if the Committee or USDA determines that:

(a) The producer has failed to properly remove the prune/plum trees from the applicable block or the whole orchard regardless of whether such failure was caused directly by the producer or by any other person or persons;

(b) The producer has not acted in good faith in connection with any activity under this program; or

(c) The producer has failed to discharge fully any obligation assumed by, or charged to, him or her under this program.

§ 81.12 Inspection of premises.

The producer must permit authorized representatives of USDA or the Committee, at any reasonable time, to have access to their premises to inspect and examine the orchard block where trees were removed and records pertaining to the orchard to determine compliance with the provisions of this part.

§ 81.13 Records and accounts.

(a) The producers participating in this program must keep accurate records and accounts showing the details relative to the prune/plum tree removal, including the contract entered into with the firm or person removing the trees, as well as the invoices.

(b) The producers must permit authorized representatives of USDA, the Committee, and the General Accounting Office, or their delegatees, at any reasonable time to inspect, examine, and make copies of such records and accounts to determine compliance with provisions of this part. Such records and accounts must be retained for two years after the date of payment to the producer under the program, or for two years after the date of any audit of records by USDA, whichever is later. Any destruction of records by the producer at any time will be at the risk of the producer when there is reason to know, believe, or suspect that matters may be or could be in dispute or remain in dispute.

§ 81.14 Offset, assignment, and prompt payment.

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop proceeds thereof in favor of the producer or any other creditors except agencies of the U.S. Government.

(b) Payments which are earned by a producer under this program may be assigned in the same manner as allowed under the provisions of 7 CFR part 1404.

(c) Prompt payment interest from AMS will not be applicable.

§ 81.15 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination. The Deputy Administrator of Fruit and Vegetable Programs shall establish the procedure for such appeals.

§ 81.16 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application of this part, and if any refund of a payment to AMS shall otherwise become due in connection with the application of this part, all payments made under this part to any producer shall be refunded to AMS together with interest.

(b) All producers signing an application for payment as having an interest in such payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application of this part.

(c) Interest shall be applicable to refunds required of any producer under this part if AMS determines that payments or other assistance were provided to a producer who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the Commodity Credit Corporation (CCC) for funds, as of the date AMS made benefits available. Such interest shall accrue from the date of repayment or the date interest increases as determined in accordance with applicable regulations. AMS may waive the accrual of interest if AMS was at fault for the overpayment.

(d) Interest allowable in favor of AMS in accordance with paragraph (c) of this section may be waived when there was no intentional noncompliance on the part of the producer, as determined by AMS. Such decision to waive or not waive the interest shall be at the discretion of the Administrator or delegatee.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed for those claims which are addressed in 7 CFR part 792.

(f) Producers must refund to AMS any excess payments, as determined by AMS, with respect to such application.

(g) In the event that a benefit under this part was provided as the result of erroneous information provided by the producer, or was erroneously or improperly paid for any other reason, the benefit must be repaid with any applicable interest.

§ 81.17 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of a prune/plum producer that is eligible to receive benefits in accordance with this part, such person or persons who would, under 7 CFR part 707 be eligible for payments and benefits covered by that part, may receive the tree-removal benefits otherwise due the actual producer.

Dated: March 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6098 Filed 3–11–02; 3:09 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV01–916–3 FIR]

Nectarines and Peaches Grown in California; Revision of Reporting Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule revising the reporting requirements under the marketing orders for California nectarines and peaches by modifying the requirement that all handlers submit a monthly destination report. This rule continues in effect the relaxation of the requirement by establishing an exemption for handlers who ship fewer than 50,000 containers or container equivalents of tree fruit, including nectarines, peaches, and plums. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative (NAC) and Peach Commodity Committees (PCC) (committees). The handling of plums grown in California is regulated by a California State marketing order.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20090–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20090–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the modification of the reporting requirements under the orders' rules and regulations by establishing an exemption from filing mandatory monthly destination reports for handlers who handle less than 50,000 containers or container equivalents of nectarines, peaches, and plums. While nectarines and peaches are regulated under the Federal marketing orders, plums are regulated under a California state marketing order. Most handlers,

however, handle and report on a combination of these fruit.

Under this modification, handlers who shipped less than 50,000 containers or container equivalents of any combination of nectarines, peaches, and plums in the 2000 season will be exempted from filing monthly destination reports in subsequent seasons, provided their shipments continue to total less than 50,000 containers or container equivalents of these fruit in the previous season.

Handlers who begin operation during or after the 2001 season will also be exempt from filing monthly destination reports during their first year of operation. These handlers will continue to be exempt from such reporting requirements as long as their shipments of these tree fruit total less than 50,000 containers or container equivalents, in the previous season.

Handlers who are not exempt, but in some subsequent year ship less than 50,000 containers or container equivalents, will be exempt the following season and will be exempt in subsequent seasons, provided their shipments continue to total less than 50,000.

Under the orders, reporting requirements are established in §§ 916.60 and 917.50 for fresh shipments of California nectarines and peaches, respectively. Prior to publication of the interim final rule, such reports were to be filed with the committees by all handlers. The information required includes: (1) The name of the shipper and the shipping point; (2) the car or truck license number (or name of the trucker), and identification of the carrier; (3) the date and time of departure; (4) the number and type of containers in the shipment; (5) the quantities shipped, showing separately the variety, grade, and size of the fruit; (6) the destination; and (7) the identification of the inspection certificate or waiver pursuant to which the fruit was handled. Other information may be requested by the committees, with the approval of the Secretary, to enable the committees to carry out their duties.

Sections 916.160 and 917.178 of the orders' rules and regulations specify the reporting procedures for handlers of nectarines and peaches, which include the requirements related to destination reports.

Information from destination reports is utilized by the NAC and PCC to determine the quantities of nectarines and peaches shipped to various markets. Such information permits the committees to target marketing research and promotion efforts more effectively, giving the committees the flexibility to direct their limited marketing funds to open new markets or expand existing markets.

The more accurate the information obtained from handlers, the more precisely the committees can address their marketing research and promotion efforts. However, this information collection comes at a cost to the committees and to handlers, especially smaller handlers who generally lack the staff to prepare such reports.

The NAC and PCC, which are responsible for local administration of the orders, met on May 3, 2001, and unanimously recommended that these reporting requirements be revised, beginning with the 2001 season, which began April 1. However, because the season had already begun, the relaxation in report requirements was implemented as of the effective date of the interim final rule.

At three subcommittee meetings prior to the May 3, 2001 committee meetings, discussions on the merits of the exemption were held. The Management Services Committee met on January 18, 2001, and discussed a request from a small handler to review the destination report requirements. It was reported that destination information from small handlers is not always accurate since the reporting handlers do not necessarily know the final destination of their fruit sold at terminal markets. It was also noted that the burden of filing destination reports is often a complaint of small handlers.

The Management Services Committee then directed the committee staff to review the destination report requirements and procedures, and make recommendations based upon their review at the following Management Services Committee meeting.

The Management Services Committee met again on March 6, 2001, and discussed the destination report information provided by the committee staff. The members also discussed changes to the destination report requirements, as well as the effect of the revision on handlers in the industry and on information gathering conducted by the committees.

A review of destination report records by the staff revealed that approximately 160 handlers shipped less than 50,000 containers of all three tree fruit during the 2000 season. As a percentage of total shipments, these handlers represent approximately 3 percent of all shipments of nectarines, peaches, and plums. The committees' staff spends a portion of their time administering the collection of this relatively small amount of additional information. The committees believe that exempting information from handlers who represent approximately 3 percent of all tree fruit shipments would not have a significant effect on overall destination information, and may actually improve the accuracy of destination information. These handlers are small entities, and such a relaxation will reduce the reporting burden on them. In addition, the committees' administrative costs associated with destination reports may be reduced.

Finally, the Management Services Committee met on April 18, 2001, to review destination report summaries from the 2000 season. Based on all the information considered, the members voted unanimously to recommend to the NAC and PCC that handlers who ship less than 50,000 containers or container equivalents of tree fruit (including nectarines, peaches, and plums) should be exempted from filing monthly destination reports.

Final Regulatory Flexibility Analysis

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

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

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration [13 CFR 121.201] as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities. Since the interim final rule was published, the small business producer standards were changed from $500,000 to $750,000.

The committees' staff has estimated that there are less than 20 handlers of nectarines and peaches in the industry

who could be defined as other than small entities. In the 2000 season, the average handler price received was $9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 555,556 containers of nectarines and peaches to have annual receipts of $5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the previous season, the committees' staff estimates that small handlers of nectarines and peaches represent approximately 94 percent of the handlers within the industry.

The committees' staff has also estimated that approximately 20 percent of the nectarine and peach producers in the industry could be defined as other than small entities. In the 2000 season, the average producer price received was $5.50 per container or container equivalent for nectarines, and $5.25 per container or container equivalent for peaches. A producer would have to produce at least 136,364 containers of nectarines and 142,858 containers of peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2000 season, the committees' staff estimates that small producers represent approximately 80 percent of the nectarine and peach producers within the industry.

This rule continues in effect the revision of §§ 916.160 and 917.178 of the orders' administrative rules and regulations to relax the requirement that all handlers file monthly destination reports. Under that revision, handlers who shipped less than 50,000 containers or container equivalents of tree fruit during the 2000 season will be exempted from filing monthly destination reports in subsequent seasons, as long as their shipments total less than 50,000 containers or container equivalents of tree fruit in the previous season.

Handlers who begin operations during or after the 2001 season will also be exempt from filing monthly destination reports during their first season of operation. Such handlers will continue to be exempt in subsequent seasons as long as their shipments total less than 50,000 containers or container equivalents of tree fruit in the previous season.

The NAC and PCC met on May 3, 2001, and unanimously recommended these changes to the reporting requirements for the 2001 season, which began April 1. This action was recommended to the committees by a subcommittee charged with review and discussion of the changes.

The Management Services Committee met on January 18, 2001, to discuss a request from a small handler concerning destination report requirements. At that time, the members reviewed the request and directed the staff to research the destination report requirements and procedures. At the March 6, 2001, meeting, the Management Services Committee reviewed a staff recommendation to relax the destination reporting requirements for small handlers. The members also considered two alternatives to this action at that meeting.

First, the committee considered not establishing any exemption for small handlers. This alternative was rejected because the members felt that small handlers should be provided an exemption from the destination reporting requirements. Second, they considered establishing a filing exemption for handlers who shipped less than 10,000 containers of tree fruit during the 2000 season. The committee estimated that this exemption would affect approximately 100 handlers only and one percent of total shipments. The Management Services Committee rejected that alternative because they believed that more handlers should be exempted from the requirement for filing destination reports. After some discussion, it was determined and recommended by the Management Services Committee that handlers who ship less than 50,000 containers or container equivalents of tree fruit should be exempted from filing monthly destination reports.

At a subsequent Management Services Committee meeting on April 18, 2001, the members reviewed destination report summaries from the 2000 season and voted unanimously to recommend to the NAC and PCC that handlers who ship less than 50,000 containers or container equivalents of tree fruit be exempted from filing monthly destination reports.

The committees make recommendations regarding all the revisions in reporting requirements after considering all available information, including comments of persons at committee and subcommittee meetings, and comments received in writing or verbally by committee staff. Such subcommittees include the Management Services Committee.

At the meetings, the impact of and alternatives to these recommendations are deliberated. These subcommittees, like the committees themselves, frequently consist of individual producers (and handlers, where authorized) with many years' experience in the industry, who are familiar with industry practices. Like all committee meetings, subcommittee meetings are open to the public and comments, both in person and in writing, are widely solicited.

This relaxation is expected to have an impact on small handlers by reducing the time and related costs of filing monthly destination reports. The committees estimate that approximately 160 peach and nectarine handlers would be exempt from filing destination reports. Each handler files an average of four reports each season. The time each handler spends preparing the monthly report has been estimated at 45 minutes. Therefore, in terms of reporting burden time, each qualified respondent handler will save an average of three hours each season as a result of this exemption. In total, this exemption could save the qualified industry respondents approximately 480 hours annually each for peach handlers and nectarine handlers.

This rule is also expected to have an impact on the committees by decreasing hours of staff time currently utilized to collect, reconcile, and assimilate destination report data received from small handlers.

This rule does not impose any additional reporting and recordkeeping requirements on either small or large handlers. In fact, as noted previously, this rule will reduce reporting and recordkeeping requirements on qualified handlers, as well as on the committees themselves. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies, such as effectuated by this rule.

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

In addition, the committees' meetings are widely publicized throughout the nectarine and peach industries and all interested parties are encouraged to attend and participate in committee deliberations on all issues. The committees routinely schedule meetings bi-annually during the last week of November or first week of December, and the last week of April or first week of May. Like all committee meetings, the May 3, 2001, meetings were public meetings, and all entities, large and small, were encouraged to express views on these issues.

In addition, the committees have a number of appointed subcommittees to review certain issues and make

recommendations to the NAC and PCC. For this action, three subcommittee meetings were held prior to the May 3, 2001, meeting at which these regulations were reviewed and discussed.

An interim final rule concerning this action was published in the **Federal Register** on July 31, 2001 (66 FR 39406). Copies of the rule were provided to all committee members and handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended October 1, 2001. No comments were received.

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

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that finalizing the interim final rule, without changes, as published in the **Federal Register** (66 FR 39406, July 31, 2001), will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

PART 916—NECTARINES GROWN IN CALIFORNIA

PART 917—PEACHES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR parts 916 and 917 which was published at 66 FR 39406, July 31, 2001, is adopted as a final rule without change.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6148 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV02–920–1 FIR]

Kiwifruit Grown in California; Relaxation of Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, a corrected interim final rule which relaxed pack requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, continues the elimination of one size designation, and the addition of two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 205–8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 205–8938 or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, continues the elimination of one size designation, and the addition of two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace.

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Section 920.52 authorizes the establishment of pack requirements. Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iii) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume fill, or bulk containers.

The amount of kiwifruit supplied to the domestic market by California handlers has declined 40 percent since the 1992–93 season. In addition, grower prices have steadily declined in spite of

a continuous increase in the U.S. per capita consumption of kiwifruit. When the order was implemented in 1984, the average Free-on-Board (FOB) value was $1.14 per pound. In 1997–1998, the Committee reviewed FOB values and determined that the average FOB value for the 1992–93 season through the 1997–98 season was $0.55 per pound.

The Committee met on July 8, 1998, and decided to address the confusion in the marketplace and the differences in size designations between California kiwifruit and imported kiwifruit, by revising the numerical counts per size designation. Section 920.302(a)(4)(iv) of the order's administrative rules and regulations was revised by an interim final rule issued on September 3, 1998 (63 FR 46861). A final rule published on July 30, 2001, redesignated § 920.302(a)(4)(iv) as (a)(4)(iii)(66 FR 39267).

While this rule increased the number of fruit that could be packed in size designations 30 through 42, experience has shown that further refinement of the California kiwifruit size designations was needed to help California handlers compete more effectively with imported fruit in the marketplace. Handlers want to better meet buyer preferences and buyers generally prefer to purchase containers with a greater number of pieces of fruit in the box. The continued relaxation of pack requirements will permit handlers to pack more individual pieces of fruit in an 8-pound sample for various size designations, and, thus, better meet buyer preferences.

During the spring of 2001, the production area was hit with a severe frost, heavy winds and hail storms. A shortened bloom period in late spring reduced the pollination of the crop and resulted in less fruit development and growth. Unusually hot temperatures during the summer months added further stress to the vines.

On July 11, 2001, the Committee considered the impact of the severe weather conditions, and estimated the 2001–2002 crop would be 6.5 million tray equivalents. During September the Committee staff conducted a pre-harvest check for sizing, quality, and maturity and found the crop was not sizing as expected. Based on the more recent observations, the field staff estimated that the amount of packable fruit would be approximately 5 million tray equivalents, versus the 6.5 million estimated at the July 11, 2001, meeting.

Because of these factors, the Committee called an emergency meeting on September 19, 2001, to discuss the marketing of the short crop and smaller-sized fruit. As previously mentioned, the rules and regulations specify a maximum number of fruit per 8-pound sample for each numerical count size designation for kiwifruit packed in bags, volume fill, or bulk containers. To enable the industry to better market the short 2001 crop, the Committee unanimously recommended relaxing the pack regulations under § 920.302(a)(4)(iii) by increasing the maximum number of fruit per 8-pound sample for size designations 42 through 25, eliminating size designation 21, and adding new size designations 20 and 23. These changes are shown in the following chart:

Size designation	Maximum number of fruit per 8-pound sample
20	**27**
23	**29**
25	27 * 32
27/28	30 * 35
30	33 * 38
33	36 * 43
36	42 * 45
39	48 * 49
42	53 * 54
45	55

* Prior number of fruit per 8-pound sample. New size designations are in bold.

This chart is commonly referred to as the ''Size Designation Chart'' in the industry. Increasing the maximum number of fruit per 8-pound sample will allow some smaller-sized fruit to be packed into a larger-size category. This rule continues to allow one more piece of fruit to be packed per 8-pound sample in size designations 42 and 39, three more pieces of fruit to be packed in size designation 36, seven more pieces of fruit to be packed in size designation 33, and five more pieces of fruit to be packed in size designations 27/28 and 25, respectively.

Additionally, handlers have the option of packing fruit as size designation 23, 20, or 45. This rule continues to reduce the percentage of fruit packed in the 40 series and continues to increase the percentage of fruit packed in the 20 and 30 series. The Committee estimated that increasing the maximum number of fruit per 8-pound sample for size designation 39 would move approximately 600,000 pounds of kiwifruit from the former size designation 42 into the new size 39 designation. Increasing the maximum number of fruit per 8-pound sample for size designation 33 will allow handlers to pack approximately 2,500,000 pounds more kiwifruit into new size designation 33. Thus, handlers will be better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. This change does not affect the minimum size and will not allow fruit currently considered ''undersized'' to be shipped. The Committee further believes that increasing the maximum number of fruit in the 8-pound sample will help reduce the sizing differences between California and imported kiwifruit. This should help California handlers compete more effectively in the marketplace.

Final Regulatory Flexibility Analysis

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

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

There are approximately 50 handlers of California kiwifruit subject to regulation under the marketing order and approximately 360 growers in the production area. Small agricultural service firms are defined by the Small Business Administration as those whose annual receipts are less than $5,000,000, and small agricultural growers are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $750,000. None of the 50 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. In addition, 354 of the 360 growers subject to regulation have annual sales less than $750,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, continues the elimination of one size designation, and the addition of two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace. Authority for this action is provided in § 920.52 of the order.

The Committee unanimously recommended relaxing the pack requirements by increasing the

maximum number of fruit per 8-pound sample for size designations 42 through 25, eliminating size designation 21, and adding size designations 20 and 23 as shown in the following chart:

Size designation	Maximum number of fruit per 8-pound sample
20	**27**
23	**29**
25	27* 32
27/28	30* 35
30	33* 38
33	36* 43
36	42* 45
39	48* 49
42	53* 54
45	55

*Prior number of fruit per 8-pound sample. New size designations are in bold.

This chart is commonly referred to as the ''Size Designation Chart'' in the industry. Increasing the maximum number of fruit per 8-pound sample will allow some smaller-sized fruit to be packed into a larger-size category. This rule continues to allow one more piece of fruit to be packed per 8-pound sample in size designations 42 and 39, three more pieces of fruit to be packed in size designation 36, seven more pieces of fruit to be packed in size designation 33, and five more pieces of fruit to be packed in size designations 27/28 and 25.

Additionally, handlers have the option of packing fruit as size designation 23, 20, or size designation 45. This rule continues to reduce the percentage of fruit packed in the 40 series and continues to increase the percentage of fruit packed in the 20 and 30 series. The Committee estimated that increasing the maximum number of fruit per 8-pound sample for size designation 39 would move approximately 600,000 pounds of kiwifruit from the former size designation 42 into the new size 39 designation. U.S. retailers prefer size 33 kiwifruit. Increasing the maximum number of fruit per 8-pound sample for size designation 33 will allow handlers to pack approximately 2,500,000 pounds more kiwifruit into new size designation 33. Thus, handlers will be better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. This change does not affect the minimum size and will not allow fruit currently considered undersized to be shipped. Imports from Europe have increased 1,409 percent since 1992–1993. During the 2000–01 season approximately 3.2 million tray equivalents were imported from Europe.

The Committee further believes that relaxing the pack requirements to permit more individual pieces of fruit in an 8-pound sample for various size designations will reduce the sizing differences between California and imported kiwifruit. Reducing the size differences should help California handlers compete more effectively in the marketplace, as buyers apparently choose to purchase containers with more pieces of fruit per container, and this relaxation permits increases in the number of pieces of fruit in bags, volume-fill, and bulk containers. The Committee has estimated that utilizing the new size designations will yield the California kiwifruit industry $24,407,981 in FOB value versus the $22,442,648 received for the 2000–2001 season. This is an additional $2.0 million in FOB value for the 2001–2002 season.

The Committee wants to maintain the reputation California has established for uniformly packed containers of kiwifruit and believes that these changes will not significantly impact uniformity. The increase in the maximum number of fruit per 8-pound sample is not so significant that consumers or retailers will notice a visual size difference in the fruit being offered. The California Kiwifruit Commission, which administers a State program utilized to promote kiwifruit grown in California, conducted kiwifruit-sizing studies several years ago. These studies show that there is only an average of 3/32-inch to 4/32-inch difference in fruit length between sizes, and 2/32-inch to 3/32-inch difference in fruit width. These differences are indistinguishable to the eye.

These changes continue to address the marketing and shipping needs of the kiwifruit industry and are in the interest of growers, handlers, buyers, and consumers. The impact of these changes is expected to be beneficial to all growers and handlers regardless of size. There is widespread agreement in the industry to relax the pack requirements.

The Committee considered other alternatives to relaxing packing requirements but determined that these suggestions will not adequately address the industry problems.

One suggestion was to change the minimum size. The Committee did not adopt this suggestion because it believes that lowering the minimum size will diminish the quality image of California kiwifruit.

Another suggestion presented was to leave the size designation chart unchanged. The Committee did not adopt this suggestion because it believes that handlers would benefit from the size designation changes.

After considering these alternatives, the Committee recommended relaxing the pack requirements for seven size designations, eliminating one size designation, and adding two new size designations. Small and large growers and handlers are expected to benefit from this relaxation. It is estimated that grower returns will increase by approximately $1.00 per box.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 19, 2001, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on October 29, 2001 (66 FR 54411). Copies of the rule were mailed by the Committee staff to all Committee members and kiwifruit handlers. In addition, the rule was made available through the internet by the Office of the Federal Register and USDA. That rule provided a 60-day comment period which ended December 28, 2001. No comments were received. A correction concerning this action was published in the **Federal Register** on January 11, 2002. (67 FR 1413). The interim final rule, as published, contained an error in the amendatory instructions affecting 7 CFR part 920. The amendatory instructions incorrectly indicated that the revised table in § 920.302 appears at the end of paragraph (a)(4)(iv). The revised table actually appears at the end of paragraph (a)(4)(iii) of that section and appropriate corrections were made to the interim final rule.

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

address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, which was published in the **Federal Register** (66 FR 54411, October 29, 2001) and corrected in the **Federal Register** (67 FR 1413, January 11, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 920 which was published at 66 FR 54411, October 29, 2001, and corrected at 67 FR 1413 on January 11, 2002, is adopted as a final rule without change.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6138 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV02–925–1 FR]

Grapes Grown in a Designated Area of Southeastern California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the California Desert Grape Administrative Committee (Committee) for the 2002 and subsequent fiscal periods from $0.01 to $0.015 per 18-pound lug of grapes handled. The Committee locally administers the marketing order which regulates the handling of grapes grown in a designated area of southeastern California. Authorization to assess grape handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: March 15, 2002.

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 925, both as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2002 and subsequent fiscal periods from $0.01 to $0.015 per 18-pound lug of grapes.

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

For the 1997 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on November 5, 2001, and estimated a January 2002 beginning reserve of approximately $124,800, and unanimously recommended expenditures of $195,215 and an assessment rate of $0.015 per 18-pound lug of grapes for the 2002 fiscal period. In comparison, last year's budgeted expenditures were $186,023. The assessment rate of $0.015 is $0.005 higher than the rate currently in effect. The higher assessment rate is needed to offset increases in salaries and to keep the operating reserve at an adequate level.

The expenditures recommended by the Committee for the 2002 fiscal period include $100,000 for research, $28,200 for compliance activities, $41,000 for salaries, and $26,015 for other expenses. Budgeted expenses for these items in 2001 were $100,000, $35,200, $15,000, and $35,823, respectively.

The assessment rate recommended by the Committee was chosen because it will provide $142,500 in assessment income (9.5 million lugs x $.015 per lug) and, when $2,000 in interest income and $50,715 of its reserves are used for

approved expenses, allow the Committee to end the 2002 fiscal period with a $74,085 reserve. The current rate of $.01 per lug would generate $95,000 in assessment income, and require the Committee to use the $2,000 in interest and $98,215 of its reserves to cover its anticipated expenses. This will result in an ending reserve of $26,585, which was not acceptable to the Committee. The December 2002 ending reserve funds (estimated to be $74,085) with the new assessment rate will be kept within the maximum permitted by the order, approximately one fiscal period's expenses (§ 925.42).

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

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

Final Regulatory Flexibility Analysis

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

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

There are approximately 80 producers of grapes in the production area and approximately 26 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Last year, about 69 percent of the handlers could be considered small businesses under SBA's definition and about 31 percent could be considered large businesses. It is estimated that about 88 percent of the producers have annual receipts less than $750,000. Therefore, the majority of handlers and producers of grapes may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2002 and subsequent fiscal periods from $0.01 to $0.015 per 18-pound lug of grapes. The Committee unanimously recommended expenditures of $195,215 and an assessment rate of $0.015 per 18-pound lug of grapes for the 2002 fiscal period. The assessment rate of $0.015 is $0.005 higher than the 2001 rate. The volume of assessable grapes is estimated at 9.5 million 18-pound lugs. Thus, the $0.015 rate should provide $142,500 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve should be adequate to cover budgeted expenses.

The expenditures recommended by the Committee for the 2002 fiscal period include $100,000 for research, $28,200 for compliance activities, $41,000 for salaries, and $26,015 for other expenses. Budgeted expenses for these items in 2001 were $100,000, $35,200, $15,000, and $35,823, respectively.

Prior to arriving at this budget the Committee considered alternative expenditure levels, but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Committee was derived by the following formula: Anticipated expenses ($195,215), plus the desired 2002 ending reserve ($74,085), minus the 2002 beginning reserve ($124,800), minus the anticipated interest income ($2,000), divided by the total estimated 2002 shipments (9.5 million 18-pound lugs). This calculation results in the $0.015 assessment rate. This rate will provide sufficient funds in combination with interest and reserve funds to meet the anticipated expenses of $195,215 and results in a December 2002 ending reserve of $74,085, which is acceptable to the Committee. The December 2002 ending reserve funds (estimated to be $74,085) will be kept within the maximum permitted by the order, approximately one fiscal periods' expenses (§ 925.41).

A review of historical information and preliminary information pertaining to the 2002 fiscal period indicates that the on-vine grower price for the 2002 season could range between $5.00 and $9.00 per 18-pound lug of grapes. Therefore, the estimated assessment revenue for the 2002 fiscal period as a percentage of total grower revenue could range between 0.2 and 0.3 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order.

In addition, the Committee's meeting was widely publicized throughout the grape production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 5, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

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

A proposed rule concerning this action was published in the **Federal Register** on January 10, 2002 (67 FR 1315). Copies of the proposed rule were also mailed or sent via facsimile to all grape handlers. Finally, the proposed rule was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending February 11, 2002, was provided for interested persons to respond to the proposal. No comments were received. However, the provisions of proposed § 925.215 have been modified in this action to add specific reference to an 18-pound lug for purposes of clarity.

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

address in the **FOR FURTHER INFORMATION CONTACT** section.

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2002 fiscal period began on January 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable grapes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 925.215 is revised to read as follows:

925.215 Assessment rate.

On and after January 1, 2002, an assessment rate of $0.015 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6145 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV02–959–1 FR]

Onions Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the South Texas Onion Committee (Committee) for the 2001–02 and subsequent fiscal periods from $0.03 to $0.05 per 50-pound container or equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning August 1, 2001, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2001–02 and subsequent fiscal periods from $0.03 to $0.05 per 50-pound container or equivalent of onions handled.

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

For the 2000–01 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal

period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 12, 2001, and unanimously recommended 2001–02 expenses of $115,189.85 for personnel, office, compliance, and partial promotion expenses. The assessment rate and specific funding for research and promotion projects were to be recommended at a later Committee meeting.

The Committee subsequently met on October 10, 2001, and recommended 2001–02 expenditures of $449,189 and an assessment rate of $0.05 per 50-pound container or equivalent of onions. Ten of the 11 Committee members present voted in support of the $0.02 per 50-pound container equivalent increase. One Committee member abstained from voting. In comparison, last year's budgeted expenditures were $306,740. The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas onions, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to $52,576. The Committee believes that a reserve that low is not adequate for its operations.

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $75,190 for administrative expenses, $30,000 for compliance, $254,000 for promotion, and $90,000 for research projects. Budgeted expenses for these items in 2000–01 were $87,109, $27,498, $39,500, and $122,200, respectively. In addition, $30,435 was expended for a retirement package for the outgoing Committee manager.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Onion shipments for the fiscal period are estimated at 7.5 million 50-pound equivalents, which should provide $375,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $276,705) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 959.43).

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

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2001–02 budget has been approved and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 78 producers of onions in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2000–01 marketing year, the industry's 40 handlers shipped onions produced on 15,166 acres with the average and median volume handled being 208,700 and 177,377 fifty-pound bag equivalents, respectively. In terms of production value, total revenues for the 40 handlers were estimated to be $73,879,800, with average and median revenues being $1,846,995 and $1,569,786, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 40 handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other production enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. All of the 78 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed $750,000.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2001–02 and subsequent fiscal periods from $0.03 to $0.05 per 50-pound container equivalent of onions. The Committee recommended 2001–02 expenditures of $449,189 and an assessment rate of $0.05 per 50-pound container or equivalent. The assessment rate of $0.05 is $0.02 higher than the 2000–01 rate. The quantity of assessable onions for the 2001–02 fiscal period is estimated at 7.5 million 50-pound equivalents. Thus, the $0.05 rate should provide $375,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $276,705) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 959.43).

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $75,190 for administrative expenses, $30,000 for compliance, $254,000 for promotion, and $90,000 for research projects. Budgeted expenses for these items in 2000–01 were $87,109, $27,498,

$39,500, and $122,200, respectively. In addition, $30,435 was expended for a retirement package for the outgoing Committee manager.

The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas onions, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to $52,576. The Committee believes that a reserve that low is not adequate for its operations.

The Committee reviewed and recommended 2001–02 expenditures of $449,189, which included an increase in its promotion program. Prior to arriving at this budget, the Committee considered information from various sources, including the Committee's Executive Committee, the Research Subcommittee, and the Market Development Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research and promotion projects to the onion industry. The assessment rate of $0.05 per 50-pound equivalent of assessable onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 7.5 million 50-pound equivalents for the 2001–02 fiscal period. This is approximately $74,190 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the 2002 shipping season indicates that the grower price for the 2001–02 fiscal period could range between $6 and $11 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2001–02 fiscal period as a percentage of total grower revenue could range between 0.45 and 0.83 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 10, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

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

A proposed rule concerning this action was published in the **Federal Register** on January 10, 2002 (67 FR 1317). Copies of the proposed rule were also mailed or sent via facsimile to all onion handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending February 11, 2002, was provided for interested persons to respond to the proposal. No comments were received.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2001–02 fiscal period began August 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period. In addition, the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this rule which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2001, an assessment rate of $0.05 per 50-pound container or equivalent is established for South Texas onions.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6146 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV02–979–1 FR]

Melons Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the South Texas Melon Committee (Committee) for the 2001–02 and subsequent fiscal periods from $0.05 to $0.06 per carton of melons handled. The Committee locally administers the marketing order which regulates the handling of melons grown in South Texas. Authorization to assess melon handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400

Independence Avenue, SW. STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas melon handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons beginning October 1, 2001, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2001–02 and subsequent fiscal periods from $0.05 to $0.06 per carton of melons handled.

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

For the 1999–2000 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on September 25, 2001, and unanimously recommended 2001–02 expenses of $90,888 for personnel, office, compliance, and partial market development expenses. The assessment rate and specific funding for research and promotion projects were to be recommended at a later Committee meeting.

The Committee subsequently met on November 8, 2001, and unanimously recommended 2001–02 expenditures of $314,388 and an assessment rate of $0.06 per carton of melons. In comparison, last year's budgeted expenditures were $241,460. The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas melons, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to $194,687, which is lower than what the Committee needs for operations. This amount is derived by taking the current reserve ($327,200), adding the $166,875 in assessment income based on the old rate (3,337,500 cartons x $0.05 per carton) and anticipated interest totaling $15,000, and then subtracting the 2001–02 budget of $314,388. With the new rate, $200,250 in assessment income would be generated, and the reserve fund would only drop to $228,062.

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $60,888 for administrative expenses, $20,000 for compliance, $137,000 for market development, and $96,500 for research projects. Budgeted expenses for these items in 2000–01 were $70,351, $21,604, $25,000, and $96,500, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of South Texas melons, anticipated interest income, and the amount of funds in the Committee's operating reserve. Melon shipments for the fiscal period are estimated at 3,337,500 cartons, which should provide $200,250 in assessment income at the $0.06 per carton rate. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses for the 2001–02 fiscal period. Funds in the reserve (currently $327,200) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 979.44).

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

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2001–02 budget has been approved and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 33 growers of melons in the production area and approximately 22 handlers subject to regulation under the marketing order. Small agricultural growers are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Most of the handlers are vertically integrated corporations involved in growing, shipping, and marketing melons. For the 2000–01 marketing year, the industry's 22 handlers shipped melons produced on 6,979 acres with the average and median volume handled being 192,450 and 84,532 cartons, respectively. In terms of production value, total revenue for the 22 handlers was estimated to be $37,478,447, with the average and median revenues being $1,703,566 and $748,273, respectively.

The South Texas melon industry is characterized by growers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of melons. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the melon production season is complete. For this reason, typical melon growers and handlers either double-crop melons during other times of the year or produce alternate crops, like onions.

Based on the SBA's definition of small entities, the Committee estimates that half of the 22 handlers regulated by the order would be considered small entities if only their spring melon revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. Of the 33 growers within the production area, few have sufficient acreage to generate sales in excess of $750,000; therefore, the majority of growers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2001–02 and subsequent fiscal periods from $0.05 to $0.06 per carton of melons. The Committee unanimously recommended 2001–02 expenditures of $314,388 and an assessment rate of $0.06 per carton of melons. In comparison, last year's budgeted expenditures were $241,460. The assessment rate of $0.06 is $0.01 higher than the rate currently in effect. At the rate of $0.06 per carton and an estimated 2001–02 melon production of 3,337,500 cartons, the projected income derived from handler assessments ($200,250), along with interest and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $327,200) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 979.44).

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $60,888 for administrative expenses, $20,000 for compliance, $137,000 for market development, and $96,500 for research projects. Budgeted expenses for these items in 2000–01 were $70,351, $21,604, $25,000, and $96,500, respectively.

The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas melons, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to $194,687, which is lower than what the Committee needs for operations. With the increased rate, the reserve fund would drop to $228,062.

The Committee voted to increase its assessment rate because the current rate would reduce the Committee's reserve funds beyond the level acceptable to the Committee. Assessment income, along with interest and funds from the Committee's authorized reserve, will provide the Committee with adequate funds to meet its 2001–02 fiscal period's expenses.

The Committee reviewed and unanimously recommended 2001–02 expenditures of $314,388, which included an increase in its market development program. Prior to arriving at this budget, the Committee considered information from various sources, including the Research and the Market Development Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research and market development projects to the melon industry. The assessment rate of $0.06 per carton of assessable melons was then determined by considering the total recommended budget, the quantity of assessable melons estimated at 3,337,500 cartons for the 2001–02 fiscal period, anticipated interest income, and the funds in the Committee's operating reserve. The recommended rate will generate $200,250, which is $114,138 below the anticipated expenses. The Committee found this acceptable because interest and reserve funds will be used to make up the deficit.

A review of historical information and preliminary information pertaining to the 2002 shipping season indicates that the grower price for the 2001–02 fiscal period could range between $7 and $11 per carton of cantaloupes and between $6 and $10 per carton of honeydew melons. Therefore, the estimated assessment revenue for the 2001–02 fiscal period as a percentage of total grower revenue could range between 0.9 and 0.5 percent for cantaloupes and between 1.0 and 0.6 percent for honeydew melons.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas melon industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 8, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

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

A proposed rule concerning this action was published in the **Federal Register** on January 10, 2002 (67 FR 1319). Copies of the proposed rule were also mailed or sent via facsimile to all melon handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending February 11, 2002, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the

compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2001–02 fiscal period began on October 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable melons handled during such fiscal period. In addition, the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 979.219 is revised to read as follows:

§ 979.219 Assessment rate.

On and after October 1, 2001, an assessment rate of $0.06 per carton is established for South Texas melons.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6140 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV02–982–1 IFR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim Final and Final Free and Restricted Percentages for the 2001–2002 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes interim final and final free and restricted percentages for domestic inshell hazelnuts for the 2001–2002 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The interim final free and restricted percentages are 4.9363 and 95.0637 percent, respectively, and the final free and restricted percentages are 6.1048 and 93.8952 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

DATES: This interim final rule is effective March 15, 2002. Comments received by May 13, 2002, will be considered prior to issuance of a final rule.

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

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

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

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

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 2001–2002 marketing year (July 1, 2001, through June 30, 2002). This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed

not later than 20 days after the date of the entry of the ruling.

This rule establishes marketing percentages which allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year, and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. The Board also computes and announces preliminary free and restricted percentages for that year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three ''normal'' years'' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. The Board may increase the three-year average by up to 25 percent, if market conditions warrant an increase. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

The quantity to be marketed is broken down into free and restricted percentages to make available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled or otherwise disposed of by handlers (restricted). Prior to September 20 of each marketing year, the Board must compute and announce preliminary free and restricted percentages. The preliminary free percentage releases 80 percent of the inshell trade demand to the domestic market. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate.

The National Agricultural Statistics Service (NASS) has estimated hazelnut production at 48,000 tons for the Oregon and Washington area. The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

The Board adjusted the crop estimate down to 44,588 tons by taking into consideration the average crop disappearance over the preceding three years (7.12 percent) and the undeclared carry-in (6 tons.) Disappearance is the difference between orchard-run production (crop estimate) and the available supply of merchantable product available for sale by handlers. This difference or disappearance consists of unharvested hazelnuts, cull product that is harvested and delivered to handlers but later discarded, or product used on the farm, sold locally, or otherwise disposed of by producers. The Board computed the adjusted inshell trade demand of 2,201 tons by taking the difference between the average of the past three years' sales (3,473 tons) and the declared carry-in from last year's crop (1,272 tons.)

The Board computed and announced preliminary free and restricted percentages of 3.9495 percent and 96.0505 percent, respectively, at its August 30, 2001, meeting. The Board computed the preliminary free percentage by multiplying the adjusted trade demand by 80 percent and dividing the result by the adjusted crop estimate (2,201 tons x 80 percent/44,588 tons = 3.9495 percent.) The preliminary free percentage thus initially released 1,761 tons of hazelnuts from the 2001 supply for domestic inshell use, and the restricted percentage withheld 42,804 tons for the export and kernel market.

Under the order, the Board must meet again on or before November 15 to recommend interim final and final percentages. The Board uses current crop estimates to calculate interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining 20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season (i.e., desirable carry-out). The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 2001, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The interim final free and restricted percentages were recommended at 4.9363 percent free and 95.0637 percent restricted. Final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carry-out, were recommended at 6.1048 percent free and 93.8952 percent restricted effective May 31, 2002. The final free percentage releases 2,722 tons of inshell hazelnuts from the 2001 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2001–2002 marketing year:

	Tons
Inshell supply:	
(1) Total production (crop estimate)	48,000
(2) Less substandard, farm use (disappearance; 7.12 percent of Item 1)	3,418
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	44,582
(4) Plus undeclared carry-in as of July 1, 2001 (subject to regulation)	6
(5) Supply subject to regulation (Item 3 plus Item 4)	44,588
Inshell trade demand:	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	3,473
(7) Less declared carry-in as of July 1, 2001 (not subject to regulation)	1,272
(8) Adjusted Inshell Trade Demand (Item 6 minus Item 7)	2,201
(9) Desirable carry-out on August 31, 2002 (15 percent of Item 6)	521
(10) Adjusted Inshell Trade Demand plus desirable carry-out (Item 8 plus Item 9)	2,722

Percentages	Free	Restricted
(11) Interim final percentages (Item 8 divided by Item 5) × 100	4.9363	95.0637
(12) Interim final free in tons (Item 8)	2,201	
(13) Interim final restricted in tons (Item 5 minus Item 8)		42,387

Percentages	Free	Restricted
(14) Final percentages (Item 10 divided by Item 5) × 100	6.1048	93.8952
(15) Final free in tons (Item 10)	2,722	
(16) Final restricted in tons (Item 5 minus Item 10)		41,866

In addition to complying with the provisions of the order, the Board also considered USDA's 1982 ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments before allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available an additional 521 tons for desirable carry-out effective May 31, 2002. The total free supply for the 2001–2002 marketing year is 3,994 tons of hazelnuts, which is the sum of the final trade demand of 3,473 tons and the 521 ton desirable carry-out. This amount is 115 percent of prior years' sales and exceeds the goal of the Guidelines.

Initial Regulatory Flexibility Analysis

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

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

Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000. There are approximately 800 producers of hazelnuts in the production area and approximately 19 handlers subject to regulation under the order. Average annual hazelnut revenue per producer is approximately $35,700, computed by dividing National Agriculture Statistics Service (NASS) figures for the average value of production for 1999 and 2000 ($28.563 million) by the number of producers. The level of sales of other crops by hazelnut producers is not known. In addition, based on Board records, about 95 percent of the handlers ship under $5,000,000 worth of hazelnuts on an annual basis. In view of the foregoing, it can be concluded that the majority of hazelnut producers and handlers may be classified as small entities.

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

Currently, U.S. hazelnut production is allocated among three market outlets: inshell domestic, inshell export, and shelled (kernel) markets. Handlers and growers receive the highest return on inshell domestic, less for inshell export, and the least for kernels (shelled). Based on Board records of average shipments for 1997–2000, the percentage going to each of those markets was 13 percent (domestic inshell), 46 percent (export inshell) and 41 percent (kernels).

The inshell market can be characterized as having limited demand and being prone to oversupply and low grower prices in the absence of supply restrictions. This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the continental U.S. On average, 76 percent of domestic inshell hazelnut shipments occur between October 1 through November 30, primarily to supply holiday nut demand.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry address its marketing problems by keeping inshell hazelnut supplies in balance with domestic needs. Volume controls fully supply the domestic inshell market while preventing an oversupply of that market. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

This rule implements volume control procedures for the 2001–2002 marketing year by establishing marketing percentages (free and restricted percentages) which determine the quantity of inshell hazelnuts that may be marketed in domestic markets. The free quantity may be marketed in domestic inshell markets and the restricted quantity must be exported, shelled, or otherwise disposed of by handlers. The computations for 2001–2002 are explained herein.

The Board is required to meet prior to September 20 of each marketing year to establish its marketing policy for that year. At its marketing policy meeting, the Board computes and announces its estimate of inshell trade demand, which is the quantity of inshell hazelnuts that handlers typically ship to the domestic market throughout the marketing season. If it determines that volume regulations would tend to effectuate the declared policy of the Act, the Board also computes and announces the preliminary free and restricted percentages for that year. At subsequent meetings, the Board determines interim final percentages and final percentages, which may be the same as, or higher than, the preliminary percentages.

The order specifies that the inshell trade demand be computed by averaging the preceding three ''normal'' years' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. If market conditions warrant, the Board may increase the three-year average by up to 25 percent.

Establishing the preliminary free percentage releases 80 percent of the inshell trade demand to the domestic market. The purpose of releasing only 80 percent is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on the preliminary crop estimate. NASS has estimated hazelnut production at 48,000 tons for the Oregon and Washington area.

At its November 2001 meeting, the Board computed the available supply of

merchantable product for sale by handlers by subtracting the average crop disappearance over the preceding three years (7.12 percent) from the 48,000-ton hazelnut crop estimate. Disappearance consists of (1) unharvested hazelnuts, (2) culled product (nuts that are harvested and delivered to handlers but later discarded), or (3) product used on the farm, sold locally, or otherwise disposed of by producers. Subtracting an additional 6 tons (the undeclared carryin) yielded the adjusted crop estimate of 44,588 tons.

The Board computed the adjusted inshell trade demand of 2,201 tons by taking the difference between the average of the past three years' sales (3,473 tons) and the declared carry-in from last year's crop (1,272 tons.)

The Board computed and announced preliminary free and restricted percentages of 3.9495 percent and 96.0505 percent, respectively, at its August 30, 2001, meeting. The Board computed the preliminary free percentage by multiplying the adjusted inshell trade demand by 80 percent and dividing the result by the adjusted crop estimate: (2,201 tons × 80 percent)/ 44,588 tons = 3.9495 percent. Establishing the 3.9495 percent preliminary free percentage allowed the initial release of 1,761 tons of hazelnuts from the 2001 supply for domestic inshell use. Establishing the 96.0505 percent restricted percentage had the effect of allocating 42,804 tons to the export and kernel markets.

Under the order, the Board must meet again on or before November 15 each year to recommend interim final and final percentages, using current crop estimates. The interim final percentages are calculated in the same way as the preliminary percentages. Computing and announcing the interim final percentage allows the release of the remaining 20 percent (to total 100 percent) of the inshell trade demand previously computed by the Board. In establishing final free percentage and restricted percentages, the Board may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions, to provide an adequate carryover into the following season (i.e., desirable carry-out).

The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 2001, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The recommended interim final free and restricted percentages were 4.9363 percent free and 95.0637 percent restricted. Recommended final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carry-out, were 6.1048 percent free and 93.8952 percent restricted, effective May 31, 2002. Establishing the final free percentage releases for domestic use the full amount of the adjusted inshell trade demand of inshell hazelnuts from the 2001 supply (2,722 tons).

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2001–2002 marketing year:

	Tons
Inshell supply:	
(1) Total production (crop estimate)	48,000
(2) Less substandard, farm use (disappearance; 7.12 percent of Item 1)	3,418
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	44,582
(4) Plus undeclared carry-in as of July 1, 2001 (subject to regulation)	6
(5) Supply subject to regulation (Item 3 plus Item 4)	44,588
Inshell trade demand:	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	3,473
(7) Less declared carry-in as of July 1, 2001 (not subject to regulation)	1,272
(9) Adjusted Inshell Trade Demand (Item 6 minus Item 7)	2,201
(9) Desirable carry-out on August 31, 2002 (15 percent of Item 6)	521
(10) Adjusted Inshell Trade Demand plus desirable carry-out (Item 8 plus Item 9)	2,722

Percentages	Free	Restricted
(11) Interim final percentages (Item 8 divided by Item 5) x 100	4.9363	95.0637
(12) Interim final free in tons (Item 8)	2,201	
(13) Interim final restricted in tons (Item 5 minus Item 8)		42,387
(14) Final percentages (Item 10 divided by Item 5) x 100	6.1048	93.8952
(15) Final free in tons (Item 10)	2,722	
(16) Final restricted in tons (Item 5 minus Item 10)		41,866

In addition to complying with the provisions of the order, the Board also considered USDA's 1982 ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to at least 110 percent of prior years' shipments before allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available an additional 521 tons for desirable carry-out effective May 31, 2002. The total free supply for the 2001–2002 marketing year is 3,994 tons of hazelnuts, which is the sum of the final trade demand of 3,473 tons (average trade acquisitions for three prior years) and the 521 ton desirable carry-out. This amount is 115 percent of prior years' sales and exceeds the 110 percent goal of the Guidelines.

The high level of production and carryin were key market factors leading to the 6.1048 percent final free percentage. Hazelnut production in 2001 is estimated to be an all-time record, 1,000 tons higher than the previous record set in 1997. Even if carryin had been zero, the amount that handlers typically ship into the domestic inshell market (*i.e.*, average trade acquisitions of 3,473 tons) equals about 8 percent of the supply (44,588 tons subject to regulation). However, the

free tonnage carryin level of 1,272 tons was also high (37 percent of the quantity of inshell hazelnuts that handlers typically ship), meaning that even less of the new production was needed to fully supply the 2001–2002 domestic inshell market. Although the domestic inshell market is a relatively small proportion of total sales (13 percent of total shipments), it remains a profitable market segment. The volume control provisions of the marketing order are designed to avoid oversupplying this particular market segment, because that would likely lead to substantially lower grower prices. The other market segments, inshell exports and kernels, are expected to continue to provide good outlets for US hazelnut production.

Since low production years typically follow high production years (a consistent pattern for hazelnuts), lower production is expected in 2002, and burdensome carryin levels will likely be significantly reduced.

Recent production and price data reflect the stabilizing effect of the volume control regulations. Industry statistics show that total hazelnut production has varied widely over the ten year period between 1991 and 2000, from a low of 16,500 tons (inshell) in 1998 to a high of 47,000 tons in 1997. Production in the shortest crop year and the biggest crop year were 55 percent and 157 percent, respectively, of the 10-year average tonnage of 29,880. The coefficient of variation (a standard statistical measure of variability; ''CV'') for hazelnut production over the ten-year period is 0.35. In contrast, the coefficient of variation for hazelnut grower prices is 0.16, less than half the CV for production. The considerably lower variability of prices versus production provides an illustration of the order's price-stabilizing impacts.

Comparing grower revenue to cost is useful in highlighting the impact on growers of recent product and price levels. A recent hazelnut cost of production study from Oregon State University estimated cost of production per acre to be approximately $1,340 for a typical 100-acre hazelnut enterprise. Average hazelnut grower revenue per bearing acre (based on NASS acreage and value of production data) equaled or exceeded that typical cost level twice between 1995 and 2000. Average grower revenue was below typical costs in the other years. Without the stabilizing impact of the order, growers may have lost more money. The volume regulations contribute to orderly marketing and market stability, and help moderate the variation in returns for all producers and handlers, both large and small.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season. This regulation provides equitable allotment of the most profitable market, the domestic inshell hazelnut market. That market is available to all handlers, regardless of size.

As an alternative to this regulation, the Board discussed not regulating the 2001–2002 hazelnut crop. However, without any regulations in effect, the Board believes that the industry would oversupply the inshell domestic market. Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA release of preliminary, interim final, and final quantities of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the U.S. This production represents, on average, less than 5 percent of total U.S. production for other tree nuts, and less than 5 percent of the world's hazelnut production.

Last season, 82 percent of the kernels were marketed in the domestic market and 18 percent were exported. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand other markets with emphasis on the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

Inshell hazelnuts produced under the order compete well in export markets because of quality. Europe has historically been the primary export market for U.S. produced inshell hazelnuts, with a ten-year average of 5,452 tons out of total average exports of 10,236 tons. Recent years have seen a significant shift in export destinations. Last season, inshell shipments to Europe totaled 3,986 tons, representing 28 percent of exports, with the largest share going to Germany. Inshell shipments to Southwest Pacific countries, and Hong Kong in particular, have increased dramatically in the past few years, rising to 58 percent of total exports of 14,400 tons in 2000. The industry continues to pursue export opportunities.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581–0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. This rule does not change those requirements. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, those held on August 31, and November 15, 2001, were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on the establishment of interim final and final free and restricted percentages for the 2001–2002 marketing year under the hazelnut marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to

give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 2001–2002 marketing year began July 1, 2001, and the percentages established herein apply to all merchantable hazelnuts handled from the beginning of the crop year; (2) handlers are aware of this rule, which was recommended at an open Board meeting, and need no additional time to comply with this rule; and (3) interested persons are provided a 60-day comment period in which to respond, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

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

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

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

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

Authority: 7 U.S.C. 601–674.

2. Section 982.249 is added to read as follows:

Note: This section will not be published in the annual Code of Federal Regulations.

§ 982.24 Free and restricted percentages—2001–2002 marketing year.

(a) The interim final free and restricted percentages for merchantable hazelnuts for the 2001–2002 marketing year shall be 4.9363 and 95.0637 percent, respectively.

(b) On May 31, 2002, the final free and restricted percentages for merchantable hazelnuts for the 2001–2002 marketing year shall be 6.1048 and 93.8952 percent, respectively.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6147 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS–01–05]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act (Act) of 1985, to reflect changes in cattle inventories and cattle and beef imports that have occurred since the most recent Board reapportionment rule became effective in 1999. These adjustments are required by the Beef Promotion and Research Order (Order) and will result in a decrease in Board membership from 110 to 108, effective with the Department of Agriculture's (USDA) appointments for terms beginning early in the year 2003.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Marlene M. Betts, Acting Chief, Marketing Programs Branch, Room 2627–S; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251. Telephone number is 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988, the Regulatory Flexibility Act, and the Paperwork Reduction Act

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*). The Administrator of AMS has considered the economic effect of this action on small entities and has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the January 26, 2001, issue of ''Cattle,'' USDA's National Agricultural Statistics Service (NASS) estimates that in 2000 the number of cattle operations in the United States totaled about 1.1 million. The majority of these operations subject to the Order, 7 CFR 1260.101 *et seq.*, are considered small businesses under the criteria established by the Small Business Administration.

This final rule imposes no new burden on the industry. It only adjusts representation on the Board to reflect changes in domestic cattle inventory and cattle and beef imports. This action will adjust representation on the Board, established under the Act. The adjustments are required by the Order and will result in a decrease in Board membership from 110 to 108.

Background and Final Action

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901 *et seq.*) and the Order issued thereunder. Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by USDA from nominations submitted by certified producer organizations. A producer may only be nominated to represent the unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years and not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to USDA modifications in the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that

includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit that has an additional one million head of cattle within a unit qualifies for additional representation on the Board as provided in § 1260.141(e)(4). As provided in § 1260.141(e)(3), importers are represented by a single unit, with the number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The initial Board appointed in 1986 was composed of 113 members. Reapportionment based on a 3-year average of cattle inventory numbers and import data, reduced the Board to 111 members in 1990 and 107 members in 1993 before the Board was increased to 111 members in 1996. The Board was decreased to 110 members in 1999 and will be decreased to 108 members with appointments for terms effective early in 2003.

The current Board representation by States or units has been based on an average of the January 1, 1996, 1997, and 1998 inventory of cattle in the various States as reported by NASS of USDA. Current importer representation has been based on a combined total average of the 1995, 1996, and 1997 live cattle imports as published by the Foreign Agricultural Service of USDA and the average of the 1995, 1996, and 1997 live animal equivalents for imported beef products.

Recommendations concerning Board reapportionment were approved by the Board at its August 9, 2001, meeting. In considering reapportionment, the Board reviewed cattle inventories as well as cattle, beef, and beef product import data for the period January 1, 1998, to January 1, 2001. The Board recommended that a 3-year average of cattle inventories and import numbers should be continued. The Board determined that an average of the January 1, 1999, 2000, and 2001 USDA cattle inventory numbers will best reflect the number of cattle in each State or unit since publication of the 1999 reapportionment rule.

The Board reviewed the February 28, 2001, USDA's Economic Research Service circular, ''Livestock, Dairy and Poultry Situation and Outlook,'' to determine proper importer representation. The Board recommended the use of a combined total of the average of the 1998, 1999, and 2000 cattle import data and the average of the 1998, 1999, and 2000 live animal equivalents for imported beef products. The method used to calculate the total number of live cattle equivalents was the same as that used in the previous reapportionment of the Board. The recommendation for importer representation is based on the most recent 3-year average of data available to the Board at its August 9, 2001, meeting to be consistent with the procedures used for domestic representation.

On October 19, 2001, AMS published in the **Federal Register** (66 FR 53124) for public comment a proposed rule providing for the adjustment in Board membership. The proposed rule was published with a request for comments to be submitted to USDA by December 18, 2001.

USDA received one comment concerning the proposed rule for Board reapportionment. The comment was from a cattle producer and supported the reapportionment plan.

Thus, the reapportionment of the Board in this final rule is unchanged from the proposed rule. This final rule decreases the number of representatives on the Board from 110 to 108. Five States—Alabama, Illinois, Kentucky, New York, and Wisconsin—lose one member each; two States and one unit—New Mexico, Wyoming, and Importer unit—gain one member each. In addition, because South Carolina no longer has sufficient cattle inventory to qualify for a position on the board independently, South Carolina will be merged with Georgia, a contiguous State that has only one member, to form a Southeast unit. The combined cattle inventory of South Carolina and Georgia will entitle the Southeast unit to two members on the Board, thus enabling both States to be represented. The States and units affected by the reapportionment plan and the current and revised member representation per unit are as follows:

States	Current Representation	Revised Representation
1. Alabama	2	1
2. Illinois	2	1
3. Kentucky	3	2
4. New Mexico	1	2
5. New York	2	1
6. Wisconsin	4	3
7. Wyoming	1	2
8. Importer unit	7	8
9. Southeast unit	.....	2
South Carolina	1	.....
Georgia	1	.....

Board representation for the entire 40 units is shown in the revised § 1260.141(a) contained herein.

The 2001 nomination and appointment process was in progress while the Board was developing its recommendations. Thus, the Board reapportionment as provided for under the rulemaking will be effective with 2002 nominations and appointments that will be effective early in the year 2003.

This action makes final the provisions of the proposed rule published at 66 FR 53124 on October 19, 2001.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 *et seq.*

2. In § 1260.141, paragraph (a) and the table immediately following it, are revised to read as follows:

§ 1260.141 Membership of Board.

(a) Beginning with the 2002 Board nominations and the associated appointments effective early in the year 2003, the United States shall be divided into 39 geographical units and 1 unit representing importers, and the number of Board members from each unit shall be as follows:

CATTLE AND CALVES [1]

State/unit	(1,000 head)	Directors
1. Alabama	1,440	1
2. Arizona	833	1
3. Arkansas	1,823	2
4. California	5,117	5
5. Colorado	3,167	3
6. Florida	1,820	2
7. Idaho	1,940	2
8. Illinois	1,497	1
9. Indiana	953	1
10. Iowa	3,683	4
11. Kansas	6,617	7
12. Kentucky	2,303	2
13. Louisiana	887	1

CATTLE AND CALVES [1]—Continued

State/unit	(1,000 head)	Directors
14. Michigan	1,013	1
15. Minnesota	2,533	3
16. Mississippi	1,100	1
17. Missouri	4,333	4
18. Montana	2,583	3
19. Nebraska	6,650	7
20. Nevada	517	1
21. New Mexico	1,617	2
22. New York	1,433	1
23. North Carolina	957	1
24. North Dakota	1,927	2
25. Ohio	1,237	1
26. Oklahoma	5,183	5
27. Oregon	1,447	1
28. Pennsylvania	1,653	2
29. South Dakota	3,950	4
30. Tennessee	2,167	2
31. Texas	13,900	14
32. Utah	903	1
33. Virginia	1,650	2
34. Wisconsin	3,383	3
35. Wyoming	1,563	2
36. Northwest		1
Alaska	11	
Hawaii	162	
Washington	1,187	
Total	1,408	
37. Northeast		1
Connecticut	65	
Delaware	28	
Maine	99	
Massachusetts	55	
New Hampshire	45	
New Jersey	50	
Rhode Island	6	
Vermont	300	
Total	647	
38. Mid-Atlantic		1
District of Columbia	0	
Maryland	243	
West Virginia	420	
Total	663	
39. Southeast		2
Georgia	1,293	
South Carolina	463	
Total	1,756	
40. Importer [2]	7,654	8

[1] 1999, 2000, and 2001 average of January 1 cattle inventory data.

[2] 1998, 1999, and 2000 average of annual import data.

* * * * *

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6141 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 319, and 381

[Docket No.01–016N]

Use of Transglutaminase Enzyme and Pork Collagen as Binders in Certain Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Affirmation of effective date for direct final rule.

SUMMARY: On October 31, 2001, the Food Safety and Inspection Service (FSIS) published a direct final rule ''Use of Transglutaminase Enzyme and Pork Collagen as Binders in Certain Meat and Poultry Products'' in the **Federal Register**. This direct final rule notified the public of FSIS's intention to amend the Federal meat and poultry products inspection regulations to permit the use of one or both of these substances, in limited amounts, as binders in certain standardized meat and poultry products. This direct final rule also announced the Agency's intention to prescribe labeling requirements when tranglutaminase enzyme (TG enzyme) is used to fabricate or reform cuts of meat or poultry. FSIS received one comment in response to the direct final rule. However, the comment was not an adverse comment or notice of intent to submit an adverse comment. Therefore, FSIS is affirming the December 31, 2001, effective date for this direct final rule.

EFFECTIVE DATE: December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0279

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2001, FSIS published a direct final rule ''Use of Transglutaminase Enzyme and Pork Collagen as Binders in Certain Meat and Poultry Products'' (66 FR 54912). This direct final amended the Federal meat inspection regulations to permit the use of pork collagen and TG enzyme, in limited amounts, as binders in certain standardized meat food products and amended the poultry products inspection regulations to permit the use of TG enzyme, in limited amounts, in certain standardized poultry products. This direct final rule also amended the meat and poultry products inspection regulations to require that, when TG enzyme is used to fabricate or reform cuts of meat or poultry, the resulting product bear labeling to indicate that it has been formed from pieces of whole muscle meat, or that it has been reformed from a single cut. This direct final was in response to petitions submitted to the Agency by Ajinomoto, U.S.A., Inc. and AMPC, Corp.

On December 3, 2001, FSIS received a comment from Hogan & Hartson, L.L.P. on behalf of Ajinomoto USA, Inc., in response to the rulemaking. The commenter, also one of the petitioners, requested that FSIS provide clarification on the scope of the direct final rule. Specifically, Ajinomoto requested that FSIS clarify that the Agency intended to allow the use of TG enzyme in cured pork products under 9 CFR 319.104 when it published the direct final rule. The commenter noted that in its petition it had specifically requested that the standard of identity for cured pork products under 9 CFR 319.104 be amended to provide for the use of TG enzyme as a binder and provided data in support of this request. The commenter also expressed full support for the rule and stated that the comment was not intended to be an adverse comment but rather a clarification on the scope of the final rule.

When it began development of the direct final rule, FSIS had determined that, based on the data submitted by Ajinomoto, TG enzyme was suitable for use as a binder in sausages as provided under part 319 of title 9. While the rule was under development, Ajinomoto submitted additional data to support the use of TG enzyme in other standardized products, including cured pork products under 9 CFR 319.140. Upon review of the additional data, FSIS determined that, in addition to sausages as provided under part 319, TG enzyme was suitable for use in restructured meats (9 CFR 319.15(d)), roast beef parboiled and steam roasted (9 CFR 319.104) cooked sausages (9 CFR 319.180) and poultry rolls (9 CFR 381.159), and incorporated these findings into the direct final rule. However, when it incorporated these products in the direct final rule, the Agency was still reviewing the data submitted on the use of TG enzyme in cured pork products defined under 9 CFR 319.104. Thus, the direct final rule does not provide for the use of TG enzyme in these products. FSIS ultimately determined that TG enzyme is suitable for use as a binder in cured pork products under 9 CFR 319.104. In response to the commenter's request to clarify the scope of the direct final rule,

the rule, as published, is not intended to provide for the use of TG enzyme in cured pork products under 9 CFR 319.104. However, because FSIS ultimately found that TG enzyme is suitable for use as a binder in these standardized products, the Agency intends to publish another direct final rule to permit such a use.

Because FSIS did not receive any adverse comments or notice of intent to submit adverse comments in response to the direct final rule, the effective date remains as December 31, 2001.

Additional Public Notification

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

Done at Washington, DC, on: March 11, 2002.

Margaret O'K Glavin,

Acting Administrator.

[FR Doc. 02–6124 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30299; Amdt. No. 434]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this 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. For the same reason, the FAA certifies that this amendment 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 95

Airspace, Navigation (air).

Issued in Washington, D.C. on March 8, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, April 18, 2002.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 434 effective date: April 18, 2002]

From	To	MEA
§ 95.1001 Direct Routes—U.S. Atlantic Routes—G437 Is Amended To Read in Part		
Mapyl, OA FIX	Elbow, BS FIX	7000
Bahamas Routes—063V Is Added To Read		
Kuray, BS FIX *1500—MOCA	Nassau, BS, VOR/DME	*2000
§ 95.6001 Victor Routes—U.S. § 95.6002 VOR Federal Airway 2 Is Amended To Read in Part		
Alexandria, MN VOR/DME	Gopher, MN VORTAC	3400
§ 95.6051 VOR Federal Airway 51 Is Amended To Read in Part		
Alma, GA, VORTAC *1700—MOCA	Dublin, GA VORTAC	*3000
§ 95.6066 VOR Federal Airway 66 Is Amended To Read in Part		
Baret, CA, FIX *6700—MCA Kumba, CA FIX, W BND	*Kumba, CA FIX	8000
Kumba, CA FIX	Imperial, CA VORTAC	4100
§ 95.6093 VOR Federal Airway 93 Is Amended To Read in Part		
Vinny, PA FIX *10000—MRA **2600—MOCA	*Roast, PA FIX	**4500
Roast, PA FIX *2600—MOCA	Lancaster, PA VORTAC	*4500
§ 95.6157 VOR Federal Airway 57 Is Amended To Read in Part		
Alma, GA VORTAC *1700—MOCA	Lotts, GA FIX	*3000
Lotts, GA FIX *1700—MOCA	Allendale, SC VOR	*6000
§ 95.6161 VOR Federal Airway 161 Is Amended To Read in Part		
Ardmore, OK VORTAC	Phara, OK FIX	3000
§ 95.6184 VOR Federal Airway 184 Is Amended To Read in Part		
Delro, PA FIX *10000—MRA *3900—MOCA	**Roast, PA FIX	**10000
Roast, PA FIX *3900—MOCA	Modena, PA VORTAC	*10000
§ 95.6194 VOR Federal Airway 194 Is Amended To Read in Part		
Hobby, TX VOR/DME	Sabine Pass, TX VOR/DME	3000
§ 95.6198 VOR Federal Airway 198 Is Amended To Read in Part		
Hobby, TX VOR/DME	Sabine Pass, TX VOR/DME	3000
§ 95.6362 VOR Federal Airway 362 Is Amended To Read in Part		
Brunswick, GA, VORTAC *1700—MOCA	Alma, GA VORTAC	*3000
Alma, GA VORTAC *1900—MOCA	Vienna, GA VORTAC	*3000
§ 95.6457 VOR Federal Airway 457 Is Amended To Read in Part		
Lancaster, PA VORTAC *10000—MRA	*Roast, PA FIX	**4500

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 434 effective date: April 18, 2002]

From	To	MEA
**2600—MOCA Roast, PA FIX *2600—MOCA	Vinny, PA FIX	*4500
§ 95.6458 VOR Federal Airway 458 Is Amended To Read in Part		
Julian, CA, VORTAC *5600—MCA Kumba, CA FIX, NW BND	*Kumba, CA FIX	7700
Kumba, CA FIX	Imperial, CA VORTAC	4100
§ 95.6474 VOR Federal Airway 474 Is Amended To Read in Part		
Delro, PA FIX *10000—MRA **3900—MOCA	*Roast, PA FIX	**10000
Roast, PA FIX *3900—MOCA	Modena, PA VORTAC	*10000
§ 95.6521 VOR Federal Airway 521 Is Amended To Read in Part		
Teres, FL FIX *7000—MCA CRESS FIX E BND **1400—MOCA	*Cress, FL FIX	**4000
§ 95.6575 VOR Federal Airway 575 Is Amended To Read in Part		
Mile High, CO VORTAC *9500—MCA NIWOT FIX NW BND	*NIWOT, CO FIX	8000
§ 95.6578 VOR Federal Airway 578 Is Amended To Read in Part		
Tift Myers, GA VOR *1900—MOCA	Alma, GA VORTAC	*3000

From	To	MEA	MAA
§ 95.7001 Jet Routes § 95.7138 Jet Route No. 138 Is Amended To Read in Part			
San Antonio, TX VORTAC	Hobby, TX VOR/DME	18000	45000

Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Points V–2 Is Amended To Add Changeover Point			
Gopher, MN VORTAC	Nodine, MN VORTAC	50	Gopher
V–97 Is Amended To Add Changeover Point			
Nodine, MN VORTAC	Gopher, MN VORTAC	60	Nodine
§ 95.6575 VOR Federal Airway 575 Is Amended To Read in Part			
Mile High, CO VORTAC *9500—MCA NIWOT FIX NW BND	*NIWOT, CO FIX	8000	
§ 95.6578 VOR Federal Airway 578 Is Amended To Read in Part			
Tift Myers, GA VOR *1900—MOCA	Alma, GA VORTAC	*3000	

From	To	MEA	MAA
§ 95.7001 Jet Routes § 95.7138 JET ROUTE NO. 138 Is Amended To Read in Part			
San Antonio, TX VORTAC	Hobby, TX VOR/DME	18000	45000

Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Points V–2 Is Amended To Add Changeover Point			
Gopher, MN VORTAC	Nodine, MN VORTAC	50	Gopher
V–97 Is Amended To Add Changeover Point			
Nodine, MN VORTAC	Gopher, MN VORTAC	60	Nodine

[FR Doc. 02–6126 Filed 3–13–02; 8:45 am]
BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL–7153–2]

Approval of the Clean Air Act Section 111 and 112 Delegation of Authority Updates to the Washington State Department of Ecology, Benton Clean Air Authority, Northwest Air Pollution Authority, Puget Sound Clean Air Agency, and Spokane County Air Pollution Control Authority

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency, Region 10 (EPA) is providing public notice of actions which are already final. EPA updated delegation of authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) to the Washington State Department of Ecology (Ecology), Benton Clean Air Authority (BCAA), Northwest Air Pollution Authority (NWAPA), Puget Sound Clean Air Agency (PSCAA), and Spokane County Air Pollution Control Authority (SCAPCA). EPA also delegated of authority for the Consolidated Air Rule (CAR) to Ecology, BCAA, and SCAPCA.

EPA is publishing informational tables in the regulations for NESHAPs and NESHAP source categories that show which subparts these agencies now have authority to implement and enforce. EPA is also publishing revisions to the names and addresses of Region 10 air agencies.

DATES: This rule is effective April 15, 2002.

ADDRESSES: Copies of information supporting this action are available for inspection during normal business hours at the following location: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Tracy Oliver, Office of Air Quality (OAQ–107), EPA, Seattle, Washington, (206) 553–1172.

SUPPLEMENTARY INFORMATION:

Contents

I. Background and Purpose
a. What is the NESHAP program?
b. What is the Consolidated Air Rule (CAR)?
c. What is the purpose of delegating authority for NESHAPs and the CAR?
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a. What specific subparts were delegated?
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I. Background and Purpose

h. What is the NESHAP program?

Hazardous air pollutants are defined in the Clean Air Act (Act) as pollutants that threaten human health through inhalation or other type of exposure. These pollutants are commonly referred to as ''air toxics'' and are listed in Section 112(b)(1) of the Act.

National Emission Standards for Hazardous Air Pollutants (NESHAPs) control emissions of hazardous air pollutants from specific source categories and implement the requirements of Section 112 of the Act. These standards are found in 40 CFR parts 61 and 63.

Section 112(l) of the Act enables EPA to approve state and local air toxics programs or rules such that these agencies can accept delegation of authority for implementing and enforcing the NESHAPs. Typically, a state or local agency requests delegation based on federal rules adopted unchanged into state or local rules.

Pursuant to the authority of Section 112(l) of the Act, EPA previously delegated authority to Ecology, BCAA, NWAPA, PSCAA, and SCAPCA through a formal rule-making process. At the time of delegation, EPA also approved streamlined procedures for requesting and approving delegation of new or updated NESHAPs.

The streamlined process for updating delegation is as follows: (1) The requesting agency sends a letter to EPA asking for delegation of new and/or revised NESHAPS that have been adopted unchanged into their regulations; (2) EPA sends a letter of response granting this delegation request (or explaining why it cannot be granted); (3) the agency does not need to send a response back to EPA; (4) if EPA does not receive a negative response from the requesting agency within 10 days of the signature date of EPA's letter, then the updated delegation becomes final 10 days after the date of EPA's letter.

i. What is the Consolidated Air Rule (CAR)?

The Consolidated Federal Air Rule (CAR) is a pilot rulemaking originating from President Clinton's March 16, 1995 initiative to reinvent environmental regulations. This rule consolidates major portions of the following New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) applicable to storage vessels, process vents, transfer operations, and equipment leaks within the Synthetic Organic Chemical Manufacturing Industry (SOCMI): 40 CFR part 60, subparts A, Ka, Kb, VV, DDD, III, NNN, and RRR; 40 CFR part 61, subparts A, V, Y, and BB; and 40 CFR part 63, subparts A, F, G, and H.

The CAR gathers together applicable Federal SOCMI rules to form one

integrated set of rules. It is an optional compliance alternative for SOCMI sources; sources may choose to comply with the consolidated rule or simply continue to comply with existing applicable rules. The intent of this consolidation is to improve understandability, reduce burden, clarify requirements, and improve implementation and compliance.

The CAR is not a new rule per se, but a repackaging of existing rules. It requires a separate delegation because it consists of new subparts in a new part of the CFR. Because it consolidates and streamlines existing rules—which may already be delegated—EPA can delegate the CAR with no additional burden other than notification. Consequently, EPA approved Ecology, BCAA, and SCAPCA's CAR delegation requests using the same streamlined approval procedures described above.

j. What is the purpose of delegating authority for NESHAPs and the CAR?

One of the goals of the Clean Air Act is to place state and local governments in positions of leadership for air pollution prevention and control. Consistent with the Act, the NESHAP program and the CAR allow EPA to transfer primary implementation and enforcement responsibility to state and local agencies, provided they request delegation and demonstrate adequate resources, procedures, and authority. As with all delegations, EPA retains authority under Section 113 of the Act to implement and enforce any federal air quality standard if needed, including NESHAPs and the CAR.

d. What is the background on delegation to these agencies?

In the past, EPA delegated authority to implement and enforce certain NESHAPs to Ecology, BCAA, NWAPA, PSCAA, and SCAPCA through formal rule-making. (For Ecology, BCAA, and SCAPCA *see* 66 FR 35115 and 66 FR 48221; for NWAPA and PSCAA *see* 63 FR 66054, 63 FR 7793, 64 FR 19719, 65 FR 10391, and 66 FR 14320) These delegations were based on EPA's determination that they have adequate resources and authority to carry-out this responsibility in a manner comparable to EPA.

Recently, all these agencies requested updated delegation of NESHAPs and some requested delegation of the CAR based on implementation of state or local rules that adopt new or more current federal rules by reference. EPA approved these requests because these agencies continue to meet the requirements for delegation.

e. How were these actions taken and why is this action being published?

The purpose of this notice is to notify the public of actions already taken by EPA to delegate new and more current NESHAP standards to Ecology, BCAA, NWAPA, PSCAA, SCAPCA and the CAR to Ecology, BCAA, and SCAPCA. These actions were taken by letter approval as follows:

Ecology—Letter from Ms. Barbara McAllister, Director, EPA, Region 10, Office of Air to Ms. Mary Burg, Program Manager, Air Quality Program, Ecology, signed February 8, 2002, effective February 18, 2002.

BCAA—Letter from Ms. Barbara McAllister, Director, EPA, Region 10, Office of Air to Dr. David Lauer, Executive Director, BCAA, signed February 8, 2002, effective February 18, 2002.

NWAPA—Letter from Ms. Barbara McAllister, Director, EPA, Region 10, Office of Air Quality to Mr. James Randles, Director, NWAPA, signed February 8, 2002, effective February 18, 2002.

PSCAA—Letter from Ms. Barbara McAllister, Director, EPA, Region 10, Office of Air to Mr. Dennis McLerran, Air Pollution Control Officer, PSCAA, signed February 8, 2002, effective February 18, 2002.

SCAPCA—Letter from Ms. Barbara McAllister, Director, EPA, Region 10, Office of Air to Mr. Eric P. Skelton, Director, SCAPCA, signed February 8, 2002, effective February 18, 2002.

These delegations were effective ten days after the signature date. If an agency did not agree to the terms of their delegation, they could submit a written Notice of Objection within 10 days and EPA would withdraw the delegation. No agency submitted a Notice of Objection.

II. Implications

a. What specific subparts were delegated?

Ecology's updated delegation of authority covers standards promulgated and revised as of the dates specified in WAC–173–400–075, amended on August 15, 2001. These are as follows: 40 CFR part 61 and Appendices in affect on February 20, 2001, except Subparts B, H, I, K, Q, R, T, W and M as it applies to nonmajor sources; 40 CFR part 63 and Appendices in effect on February 20, 2001, except Subparts C, E, and M as it applies to nonmajor sources; 40 CFR part 63 subpart MM in effect on March 13, 2001; and 40 CFR part 65 in effect December 14, 2000. New or revised NESHAP and CAR subparts that become effective after the dates cited here are not delegated to Ecology; these remain the responsibility of EPA.

BCAA's updated delegation of authority covers standards promulgated and revised as of the dates specified in WAC–173–400–075, amended on August 15, 2001. These are as follows: 40 CFR part 61 and Appendices in effect on February 20, 2001, except Subparts B, H, I, K, Q, R, T, and W; 40 CFR part 63 and Appendices in effect on February 20, 2001, except Subparts C, E, S, LL and M as it applies to nonmajor sources; 40 CFR part 65 in effect December 14, 2000. New or revised NESHAP and CAR subparts that become effective after the dates cited here are not delegated to BCAA; these remain the responsibility of EPA.

NWAPA's updated delegation of authority covers standards promulgated and revised before July 1, 2000, except as specified in NWAPA's Regulation Section 104.2, amended on June 14, 2001. The delegation excludes: 40 CFR part 61, Subparts B, H, I, K, Q, R, T, and W; and 40 CFR part 63, Subparts LL and S as it applies to Kraft and Sulfite Pulping Mills. New or revised NESHAPs that become effective after July 1, 2001 are not delegated to NWAPA; these remain the responsibility of EPA.

PSCAA's updated delegation of authority covers standards promulgated and revised prior to July 1, 2001 as specified in PSCAA Regulation I, Section 6.11, amended on September 13, 2001. The delegation excludes: 40 CFR part 61, Subparts B, H, I, K, Q, R, T, and W; and 40 CFR part 63, Subparts LL and S as it applies to Kraft and Sulfite Pulping Mills. New or revised NESHAPs that become effective after July 1, 2001 are not delegated to PSCAA; these remain the responsibility of EPA.

SCAPCA's updated delegation of authority covers standards promulgated and revised as of the dates specified in WAC–173–400–075, amended on August 15, 2001. These are as follows: 40 CFR part 61 and Appendices in effect on February 20, 2001, except Subparts B, H, I, K, Q, R, T, and W; 40 CFR part 63 and Appendices in effect on February 20, 2001 except Subparts C, E, LL, M as it applies to nonmajor sources, and S as it applies to Kraft and Sulfite Pulping Mills; 40 CFR part 65 in effect December 14, 2000. New or revised NESHAP and CAR subparts that become effective after the dates cited here are not delegated to SCAPCA; these remain the responsibility of EPA.

b. What are the conditions of these delegations?

These delegations are subject to all federal law, policy, guidance and

determinations pursuant to 40 CFR parts 61, 63, and 65. Some authorities cannot be delegated and are retained by EPA. These include: (1) certain authorities in the General Provisions of Parts 61 and 63; (2) specific provisions within some Part 61 and 63 subparts; and (3) for those agencies receiving delegation of the CAR, 40 CFR part 65, § 65.8 and § 65.46 of subpart C, and § 65.102 of subpart F.

In general, EPA does not delegate any authorities that require implementation through formal rulemaking or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of the Act. Examples of the types of authorities EPA retains are: equivalency determinations, approval of alternative test methods, decisions where federal oversight is needed to ensure national consistency, and decisions that require rulemaking to implement. The authorities listed in the table below are the specific General Provision authorities that cannot be delegated to any state or local agency and are retained by EPA

TABLE 1.—PART 61 AND 63 GENERAL PROVISIONS AUTHORITIES THAT CANNOT BE DELEGATED

Section	Authorities
61.04(b)	Waiver of Recordkeeping.
61.12(d)(1)	Approval of Alternative Means of Emission Limitation.
61.13(h)(1)(ii)	Approval of Major Alternatives to Test Methods.
61.14(g)(1)(ii)	Approval of Major Alternatives to Monitoring.
61.16	Availability of Information.
61.16	Availability of Information.
61.53(c)(4)	List of Approved Design, Maintenance, and Housekeeping Practices for Mercury Chloralki Plants.
63.6(g)	Approval of Alternative Non-Opacity Emission Standards.
63.6(h)(9)	Approval of Alternative Opacity Standard.
63.7(e)(2)(ii) and (f)	Approval of Major Alternative to Test Methods.
63.8(f)	Approval of Major Alternatives to Monitoring.
63.10(f)	Waiver of Recordkeeping—all.

The reader should refer to 40 CFR 63.90 as well as each agency's original delegation for more information about which General Provisions are delegated and which are reserved by EPA. For information about specific exclusions within a particular standard, the reader should refer to that specific subpart in 40 CFR parts 61, 63, and 65.

c. What does updated delegation mean for these agencies?

Ecology, BCAA, NWAPA, PSCAA, and SCAPCA are the primary implementation and enforcement authority for delegated standards. They are the recipient of notifications and reports and the point of contact for most questions and compliance issues. They work directly with owners and operators of affected facilities subject to delegated standards to ensure all required information is submitted to them. EPA ensures that this information is submitted to EPA upon request.

EPA requests that these agencies meet certain reporting requirements. For example, EPA requires submission of source data, compliance information, copies of determinations, copies of notifications pertaining to continuous opacity monitoring use, and copies of information about changes to test methods and monitoring. More detail about these requirements are provided in Ecology, BCAA, NWAPA, PSCAA, and SCAPCA's original delegations.

d. What does updated delegation mean for affected sources?

Sources who are subject to delegated NESHAPs or the CAR will send notifications and reports to their respective agency, except for notifications, reports, and requests that pertain to authorities that are not delegated. The later should be sent to EPA. (see above, ''What are the conditions of these delegations?'')

III. Summary

This document provides public notice of updates to NESHAP and CAR delegations for Ecology, BCAA, NWAPA, PSCAA, and SCAPCA. These delegations are already final and were granted by letter approval from the Director, Office of Air Quality, EPA, Region 10, to the air program directors at Ecology, BCAA, NWAPA, PSCAA, and SCAPCA. These delegations are subject to all Federal law, policy, guidance and determinations issued pursuant to 40 CFR parts 61, 63, and 65. Copies of delegation letters can be obtained by contacting EPA at the address above.

IV. Administrative Requirements

a. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled ''Regulatory Planning and Review.''

This rule is not subject to Executive Order 13045, entitled, ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

b. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local

officials early in the process of developing the proposed regulation.

This rule 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, because it merely approves a state program and rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this rule.

Although Section 6 of the Executive Order does not apply to this rule, EPA did consult with representatives of state government in developing this rule, and this rule is in response to the State's delegation request.

c. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule.

d. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government entities with jurisdiction over populations of less than 50,000.

Delegation of authority to implement and enforce unchanged federal standards under Section 112(l) of the CAA does not create any new requirements but simply transfers primary implementation authorities to the state (or local) agency. Therefore, because this action does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

e. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the delegation action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

f. Submission to Congress and the Comptroller General

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**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

g. Petitions for Judicial Review

Under Section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 13, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* Section 307(b)(2)).

List of Subjects

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Radionuclides, Radon, Reporting and recordkeeping requirements, Uranium, Vinyl chloride.

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 20, 2002.

Ron Kreizenbeck,

Acting Regional Administrator, Region 10.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR parts 61 and 63 as follows:

PART 61—[AMENDED]

1. The authority citation for Part 61 continues to read as follows:

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

Subpart A—General Provisions

2. Section 61.04 is amended by adding paragraph (b)(N); revising paragraphs (b)(C); (b)(MM) introductory text, (b)(MM)(i) through (vii); (b)(WW) and (c)(10) to read as follows:

§ 61.04 Addresses.

* * * * *

(b) * * *

(C) State of Alaska. (i) Alaska Department of Environmental Conservation (ADEC), 410 Willoughby

Avenue, Suite 303, Juneau, AK 99801–1795, *http://www.state.ak.us/local/akpages/ENV.CONSERV/home.htm*.

(ii) See paragraph (c)(10) of this section for a table indicating the delegation status of National Emission Standards for Hazardous Air Pollutants for Region 10—Alaska, Idaho, Oregon, and Washington.

* * * * *

(N) State of Idaho. (i) Idaho Department of Environmental Conservation (IDEQ), 1410 N. Hilton, Boise, ID 83706, *http://www2.state.id.us/deq/*.

(ii) See paragraph (c)(10) of this section for a table indicating the delegation status of National Emission Standards for Hazardous Air Pollutants for Region 10—Alaska, Idaho, Oregon, and Washington.

* * * * *

(MM) State of Oregon. (i) Oregon Department of Environmental Quality (ODEQ), 811 SW Sixth Ave, Portland, OR 97204–1390, *http://www.deq.state.or.us/*.

(ii) Lane Regional Air Pollution Authority (LRAPA), 1010 Main Street, Springfield, Oregon 97477, *http://www.lrapa.org*.

(iii) See paragraph (c)(10) of this section for a table indicating the delegation status of National Emission Standards for Hazardous Air Pollutants for Region 10—Alaska, Idaho, Oregon, and Washington.

(iv)–(vii) [Reserved]

* * * * *

(WW) State of Washington. (i) Washington State Department of Ecology (Ecology), P.O. Box 47600, Olympia, WA 98504–7600, *http://www.ecy.wa.gov/*.

(ii) Benton Clean Air Authority (BCAA), 650 George Washington Way, Richland, WA 99352–4289, *http://www.bcaa.net/*.

(iii) Northwest Air Pollution Control Authority (NWAPA), 1600 South Second St., Mount Vernon, WA 98273–5202, *http://www.nwair.org/*.

(iv) Olympic Air Pollution Control Authority (OAPCA), 909 Sleater-Kinney Road S.E., Suite 1, Lacey, WA 98503–1128, *http://www.oapca.org/*.

(v) Puget Sound Clean Air Agency (PSCAA), 110 Union Street, Suite 500, Seattle, WA 98101–2038, *http://www.pscleanair.org/*.

(vi) Spokane County Air Pollution Control Authority (SCAPCA), West 1101 College, Suite 403, Spokane, WA 9920, *http://www.scapca.org/*.

(vii) Southwest Clean Air Agency (SWCAA), 1308 NE 134th St., Vancouver, WA 98685–2747, *http://www.swcleanair.org/*.

(viii) Yakima Regional Clean Air Agency (YRCAA), Larson Building, Suite 1016, 6 South 2nd St., Yakima WA 98901, *http://co.yakima.wa.us/cleanair/default.htm*.

(ix) See paragraph (c)(10) of this section for a table indicating the delegation status of National Emission Standards for Hazardous Air Pollutants for Region 10—Alaska, Idaho, Oregon, and Washington.

* * * * *

(c) * * *

(10) The following table lists the delegation status of specific Part 61 Subparts that have been delegated unchanged to state and local air pollution control agencies in Region 10. An ''X'' indicates the subpart has been delegated, subject to all the conditions and limitations set forth in federal law, regulations, policy, guidance, and determinations. Some authorities cannot be delegated and are retained by EPA. These include certain General Provisions authorities and specific parts of some standards. The dates noted at the end of this table indicate the effective dates of federal rules that have been delegated. Any amendments made to these rules after this effective date are not delegated.

DELEGATION STATUS FOR PART 61 STANDARDS—REGION 10 [1]

40 CFR Part 61, Subparts [2]	ADEC [3]	IDEQ [4]	ODEQ [5]	LRAPA [6]	Ecology [7]	BCAA [8]	NWAPA [9]	OAPCA [10]	PSCAA [11]	SCAPCA [12]	SWAPCA [13]	YRCAA [14]
A General Provisions [15]	X	[4] X			X	X	X	X	X	X	X	X
B Radon from Underground Uranium Mines.												
C Beryllium		[4] X			X	X	X	X	X	X	X	X
D Beryllium Rocket Motor Firing		[4] X			X	X	X	X	X	X		
E Mercury	X	[4] X			X	X	X	X	X	X	X	X
F Vinyl Chloride		[4] X			X	X	X	X	X	X	X	X
H Emissions of Radionuclides other than Radon from Dept of Energy facilities.												
I Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H.												
J Equipment Leaks of Benzene	X	[4] X			X	X	X	X	X	X	X	X
K Radionuclides from Elemental Phosphorus Plants.												
L Benzene from Coke Recovery		[4] X			X	X	X	X	X	X	X	X
M Asbestos	[3] X	[4] X			[7] X	[8] X	X	[10] X	X	X	X	X
N Arsenic from Glass Plants		[4] X			X	X	X	X	X	X	X	X
O Arsenic from Primary Copper Smelters		[4] X			X	X	X	X	X	X	X	X
P Arsenic from Arsenic Production Facilities		[4] X			X	X	X	X	X	X	X	X
Q Radon from Dept of Energy facilities.												
R Radon from Phosphogypsum Stacks.												
T Radon from Disposal of Uranium Mill Tailings.		[4] X										
V Equipment Leaks	X	[4] X			X	X	X	X	X	X	X	X
W Radon from Operating Mill Tailings.												
Y Benzene from Benzene Storage Vessels	X	[4] X			X	X	X	X	X	X	X	X
BB Benzene from Benzene Transfer Operations.		[4] X			X	X	X	X	X	X	X	X
FF Benzene Waste Operations	X				X	X	X	X	X	X	X	X

[1] Table last updated on April 15, 2002.

[2] Any authority within any Subpart of this Part that is identified as not delegatable, is not delegated.

[3] Alaska Department of Environmental Conservation (01/18/1997). Note: Alaska received delegation for § 61.145 and § 61.154 of Subpart M (Asbestos), along with other sections and appendices which are referenced in § 61.145, as § 61.145 applies to sources required to obtain an operating permit under Alaska's regulations. Alaska has not received delegation for Subpart M for sources not required to obtain an operating permit under Alaska's regulations.

[4] Idaho Department of Environmental Quality (07/01/2000). Note: Delegation of these 40 CFR Part 61, Subparts applies only to those sources in Idaho required to obtain an operating permit under Title V of the Clean Air Act.

[5] Oregon Department of Environmental Quality.

[6] Lane Regional Air Pollution Authority.

[7] Washington Department of Ecology (02/20/2001). Note: Delegation of 40 CFR Part 63, Subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act, including Hanford. (Pursuant to RCW 70.105.240, only Ecology can enforce regulations at Hanford).

[8] Benton Clean Air Authority (02/20/2001). Note: Delegation of 40 CFR Part 63, Subpart M excludes Hanford, see footnote 7.

[9] Northwest Air Pollution Authority (07/01/2000).

[10] Olympic Air Pollution Control Authority (07/01/2000). Note: Delegation of 40 CFR Part 63, Subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act.

[11] Puget Sound Clean Air Agency (07/01/2001).

[12] Spokane County Air Pollution Control Authority (02/20/2001).

[13] Southwest Air Pollution Control Authority (08/01/1998).

[14] Yakima Regional Clean Air Authority (07/01/2000).

[15] General Provisions Authorities which are not delegated include approval of major alternatives to test methods, approval of major alternatives to monitoring, and any sections in the subparts pertaining to approval of alternative standards (*i.e.,* alternative means of emission limitations). For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see 40 CFR 63.90.

PART 63—[AMENDED]

1. The authority citation for Part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by revising (a)(47)(i) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(47) Washington. (i) The following table lists the delegation status of specific part 63 Subparts that have been delegated to state and local air pollution control agencies in Washington. An ''X'' indicates the subpart has been delegated, subject to all the conditions and limitations set forth in Federal law, regulations, policy, guidance, and determinations. Some authorities cannot be delegated and are retained by EPA. These include certain General Provisions authorities and specific parts of some standards. The dates noted at the end of this table indicate the effective dates of Federal rules that have been delegated. Any amendments made to these rules after this effective date are not delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF WASHINGTON [1]

40 CFR Part 63, Subparts [2]	Ecology [3]	BCAA [4]	NWAPA [5]	OAPCA [6]	PSCAA [7]	SCAPCA [8]	SWCAA [9]	YRCAA [10]
A General Provisions [11]	X	X	X	X	X	X	X	X
D Early Reductions	X	X	X	X	X	X	X	X
F HON-SOCMI	X	X	X	X	X	X	X	X
G HON-Process Vents	X	X	X	X	X	X	X	X
H HON-Equipment Leaks	X	X	X	X	X	X	X	X
I HON-Negotiated Leaks	X	X	X	X	X	X	X	X
L Coke Oven Batteries	X	X	X	X	X	X	X	X
M Perchloroethylene Dry Cleaning	X[3]	X[4]	X		X[7]	X[8]	X	X[10]
N Chromium Electroplating	X	X	X	X	X	X	X	X
O Ethylene Oxide Sterilizers	X	X	X	X	X	X	X	X
Q Industrial Process Cooling Towers	X	X	X	X	X	X	X	X
R Gasoline Distribution	X	X	X	X	X	X	X	X
S Pulp and Paper [12]	X		[5]	X[6]	X[7]	X[8]	X[9]	X[10]
T Halogenated Solvent Cleaning	X	X	X	X	X	X	X	X
U Polymers and Resins I	X	X	X	X	X	X	X	X
W Polymers and Resins II–Epoxy	X	X	X	X	X	X	X	X
X Secondary Lead Smelting	X	X	X	X	X	X	X	X
Y Marine Tank Vessel Loading	X	X	X		X	X	X	
AA Phosphoric Acid Manufacturing Plants	X	X	X	X	X	X		X
BB Phosphate Fertilizers Production Plants	X	X	X	X	X	X		X
CC Petroleum Refineries	X	X	X	X	X	X	X	X
DD Off-Site Waste and Recovery	X	X	X	X	X	X	X	X
EE Magnetic Tape Manufacturing	X	X	X	X	X	X	X	X
GG Aerospace Manufacturing & Rework	X	X	X	X	X	X	X	X
HH Oil and Natural Gas Production Facilities	X	X	X	X	X	X		X
II Shipbuilding and Ship Repair	X	X	X	X	X	X	X	X
JJ Wood Furniture Manufacturing Operations	X	X	X	X	X	X	X	X
KK Printing and Publishing Industry	X	X	X	X	X	X	X	X
LL Primary Aluminum [13]	X							
MM Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills [14].	X							
OO Tanks—Level 1	X	X	X	X	X	X		X
PP Containers	X	X	X	X	X	X		X
QQ Surface Impoundments	X	X	X	X	X	X		X
RR Individual Drain Systems	X	X	X	X	X	X		X
SS Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or Process.	X	X	X	X	X	X		X
TT Equipment Leaks—Control Level 1	X	X	X	X	X	X		X
UU Equipment Leaks—Control Level 2	X	X	X	X	X	X		X
VV Oil-Water Separators and Organic-Water Separators.	X	X	X	X	X	X		X
WW Storage Vessels (Tanks)—Control Level 2	X	X	X		X	X		
YY Source Categories: Generic MACT	X	X	X		X	X		
CCC Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants.	X	X	X		X	X		
DDD Mineral Wool Production	X	X	X		X	X		
EEE Hazardous Waste Combustors	X	X	X		X	X		
GGG Pharmaceuticals Production	X	X	X		X	X		
HHH Natural Gas Transmission and Storage Facilities.	X	X	X		X	X		
III Flexible Polyurethane Foam Production	X	X	X		X	X		X
JJJ Polymers and Resins IV	X	X	X		X	X	X	
LLL Portland Cement Manufacturing	X	X	X		X	X		
MMM Pesticide Active Ingredient Production	X	X	X		X	X		
NNN Wool Fiberglass Manufacturing	X	X	X		X	X		
OOO Manufacture of Amino Phenolic Resins	X	X	X		X	X		
PPP Polyether Polyols Production	X	X	X		X	X		

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF WASHINGTON [1]—Continued

40 CFR Part 63, Subparts [2]	Ecology [3]	BCAA [4]	NWAPA [5]	OAPCA [6]	PSCAA [7]	SCAPCA [8]	SWCAA [9]	YRCAA [10]
RRR Secondary Aluminum Production	X	X			X	X		
TTT Primary Lead Smelting	X	X	X		X	X		
VVV Publicly Owned Treatment Works	X	X	X		X	X		
XXX Ferroalloys Production: Ferromanganese & Silicomanganese.	X	X	X		X	X		
CCCC Manufacture of Nutritional Yeast					X			
GGGG Extraction of Vegetable Oil					X			
VVVV Boat Manufacturing.								

[1] Table last updated on April 15, 2002. See 40 CFR 61.04(b)(WW) for agency addresses.
[2] Any authority within any subpart of this part that is identified as not delegatable, is not delegated.
[3] Washington State Department of Ecology (03/13/2001 for MM, 02/20/2001 for all others). Note: delegation of subpart M applies only to those sources required to obtain an operating permit under Title V of the Clean Air Act.
[4] Benton Clean Air Agency (02/20/2001). Note: delegation of subpart M applies only to those sources required to obtain an operating permit under Title V of the Clean Air Act.
[5] Northwest Air Pollution Control Agency (07/01/2000). Note: delegation of subpart S applies to all applicable facilities and processes except Kraft and Sulfite Pulping Mills (see footnote 12).
[6] Olympic Air Pollution Control Agency (07/01/2000). Note: delegation of subpart M applies only to those sources required to obtain an operating permit under Title V of the Clean Air Act; delegation of subpart S applies to all applicable facilities and processes except Kraft and Sulfite Pulping Mills (see footnote 12).
[7] Puget Sound Clean Air Agency (07/01/2001). Note: delegation of subpart S applies to all applicable facilities and processes exept Kraft and Sulfite Pulping Mills (see footnote 12). For information about delegation of subpart M, see paragraph (a)(47)(ii) of this section.
[8] Spokane County Air Pollution Control Agency (02/20/2001). Note: delegation of subpart M applies only to those sources required to obtain an operating permit under Title V of the Clean Air Act; delegation of subpart S applies to all applicable facilities and processes except Kraft and Sulfite Pulping Mills (see footnote 12).
[9] Southwest Clean Air Agency (08/01/1998). Note: delegation of subpart S applies to all applicable facilities and processes except Kraft and Sulfite Pulping Mills (see footnote 12).
[10] Yakima Regional Clean Air Authority (07/01/2000). Note: delegation of subpart M applies only to those sources required to obtain an operating permit under Title V of the Clean Air Act; delegation of subpart S applies to all applicable facilities and processes except Kraft and Sulfite Pulping Mills (see footnote 12).
[11] General Provisions Authorities which are not delegated include approval of major alternatives to test methods, approval of major alternatives to monitoring, and any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations). For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see § 63.90.
[12] Subpart S of this part as it pertains to Kraft and Sulfite Pulping Mills cannot be delegated to any local agencies in Washington. The Washington State Department of Ecology retains sole authority to regulate Kraft and Sulfite Pulping Mills, pursuant to Washington State Administrative Code 173–405–012 and 173–410–012.
[13] Subpart LL of this part cannot be delegated to any local agencies in Washington because the Washington State Department of Ecology retains sole authority to regulate Primary Aluminum Plants, pursuant to Washington Administrative Code 173–415–010.
[14] Subpart MM of this part cannot be delegated to any local agencies in Washington because the Washington State Department of Ecology retains sole authority to regulate Kraft and Sulfite Pulping Mills, pursuant to Washington State Administrative Code 173–405–012 and 173–410–012.

* * * * *

[FR Doc. 02–5603 Filed 3–13–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7156–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deletion for the White Bridge Road property of the Asbestos Dump Superfund site from the National Priorities List; correction.

SUMMARY: The Environmental Protection Agency (EPA) published a document in the **Federal Register** of February 8, 2002 (67 FR 5955), announcing the deletion of the White Bridge Road property of the Asbestos Dump Superfund site from the National Priorities List. The document contained an error regarding a reference to a table of appendix B of 40 CFR part 300. This document corrects the reference to ''Table 2'' to read ''Table 1''.

DATES: Effective on March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Kim O'Connell, (212) 637–4399; e-mail: *oconnell.kim@epa.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 8, 2002, in FR Doc. 02–3098, under the ''PART 300—[AMENDED]'' caption, make the following correction:

PART 300—[CORRECTED]

Appendix B—[Corrected]

On page 5955, in the second column, correct amendatory instruction 2 to read as follows:

2. Table 1 of appendix B to part 300 is amended by adding a ''P'' in the Notes column in the entry for Asbestos Dump, Millington, New Jersey.

Dated: February 25, 2002.

William J. Muszynski,

Deputy Regional Administrator, Region II.

[FR Doc. 02–5864 Filed 3–13–02; 8:45 am]
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GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–3 and 102–84

[FPMR Amendment D–98]

RIN 3090–AG55

Annual Real Property Inventories

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is adopting as final without change an interim rule which revised the Federal Property Management Regulations (FPMR) by moving coverage on the annual real property inventories into the Federal Management Regulation (FMR). A cross-reference was added to the FPMR to

direct readers to the coverage in the FMR. The FMR coverage was written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: This final rule becomes effective March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, 202–501–1737.

SUPPLEMENTARY INFORMATION:

A. Background

In furtherance of its leadership role in real property asset management, the Office of Governmentwide Policy, Office of Real Property, conducted a comprehensive review of the policies contained in Federal Property Management Regulations (FPMR) Part 101–3 (41 CFR part 101–3), entitled ''Annual Real Property Inventories.'' This review was based on a collaborative effort with Federal real property holding agencies that utilize the Worldwide Inventory of Federal Real Property.

Representatives from the Department of the Interior, the Department of Energy, and the Army Corps of Engineers participated with GSA in conducting the initial steps of the comprehensive review of the policies in FPMR part 101–3 (41 CFR part 101–3). The review focused on improvements to make the real property inventory program more useful and to enable Federal agencies to more effectively manage their real property inventories. In addition, we have rewritten these regulations in plain language format. These regulations are being transferred from the FPMR to the FMR to enable the Government to better focus on implementing statutory requirements, Executive Orders, and governmentwide policies rather than on detailed operating procedures.

An interim rule was published in the **Federal Register** on November 2, 2001 (66 FR 55593). No comments were received in response to the interim rule.

B. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule will 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 because it applies solely to matters concerning agency management and personnel.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–3 and 102–84

Federal buildings and facilities, Government property management.

Interim Rule Adopted as Final Without Change

For the reasons set forth in the preamble and under the authority of 40 U.S.C. 486(c), the interim rule revising 41 CFR part 101–3 and adding 41 CFR part 102–84 which was published in the **Federal Register** at 66 FR 55593 on November 2, 2001, is adopted as a final rule without change.

Dated: February 28, 2002.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02–5775 Filed 3–13–02; 8:45 am]

BILLING CODE 6820–23–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[WT Docket No. 01–32; FCC 02–09]

Implementation of Competitive Bidding Rules to License Certain Rural Service Areas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (''the Commission''), pursuant to the Balanced Budget Act of 1997, takes action to grant initial licenses for certain areas of the country for cellular service by allowing all eligible parties to apply for initial licenses, licensing markets based on rural service areas (RSAs) under part 22 of its rules, and using its part 1 competitive bidding rules to auction these licenses.

DATES: Effective April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Katherine M. Harris at (202) 418–0609 (Wireless Telecommunications Bureau).

SUPPLEMENTARY INFORMATION: This is a summary of the Report and Order (''R&O'') in WT Docket No. 01–32, FCC 02–9, adopted January 16, 2002 and released January 28, 2002. The complete text is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC and also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW, Room CY–B402, Washington, DC 20554. The document is also available via the Internet at *http://www.fcc.gov/Bureaus/Wireless/Orders/2001/fcc02-9.pdf.*

Paperwork Reduction Act

1. The R&O contains no proposed information collection.

Synopsis of the Report and Order

2. In the *Notice of Proposed Rule Making* in this proceeding (*NPRM*), 66 FR 14104 (March 9, 2001), the Commission proposed rules for awarding licenses for four cellular Rural Service Areas (RSAs) that remain unlicensed because the initial lottery winner was disqualified or has otherwise withdrawn its application.

3. There are currently four cellular RSA markets that remain unlicensed because the initial lottery winner was disqualified. These markets are: 332A—Polk, AR; 582A—Barnes, ND; 672A—Chambers, TX ; and 727A—Ceiba, PR. Three additional markets (370A—Monroe, FL; 492A—Goodhue, MN; and 615A—Bradford, PA) were the subject of recent Congressional action in which the Commission was directed to reinstate the original lottery winner in each of the three markets to tentative selectee status and proceed with processing the selectee's application for authority to operate. *See* District of Columbia Appropriations Act of FY 2001, Public Law 106–553, Title X, 1007, 114 Stat. 2762, Launching Our Communities' Access to Local Television Act of 2000 (2000) (D.C. Appropriations Act of FY 2001); *Public Notice,* Wireless Telecommunications Bureau Grants Rural Cellular Licenses, 16 FCC Rcd 5601 (2001) (not published in the **Federal Register**), recon. denied, In the Matter of Applications of Great Western Cellular Partners, L.L.C., Monroe Telephone Services, L.L.C., and Futurewave Partners, L.L.C., *Memorandum Opinion and Order,* DA 01–2443 (CWD rel. Oct. 19, 2001) (application for review pending). Under

the Balanced Budget Act of 1997 (1997 Budget Act), the Commission is now required, with certain exceptions not applicable here, to resolve mutually exclusive applications for initial licenses by competitive bidding. *See* Balanced Budget Act of 1997, Public Law 105–33, 3002(a), 111 Stat. 251, 258–60 (1997); 1997 Budget Act, Section 3002(a)(1)(A), *codified* at 47 U.S.C. 309(j)(1), (2); 1997 Budget Act, Section 3002(a)(2)(B), *codified* at 47 U.S.C. 309(i)(5). Based on the record compiled in this proceeding the Commission has decided to implement the proposals put forth in the *NPRM,* namely, to: (1) Allow all eligible parties to apply for these initial licenses; (2) license these markets on an RSA basis under our part 22 rules; and (3) use our part 1 competitive bidding rules to auction these licenses.

Background

4. The Commission has been awarding cellular licenses since 1982. Under the original cellular licensing rules, one of the two cellular channel blocks in each market (the B block) was awarded to a local wireline carrier, while the other block (the A block) was awarded competitively to a carrier other than a local wireline incumbent. After awarding the first thirty Metropolitan Statistical Area (MSA) licenses pursuant to comparative hearing rules, the Commission adopted rules in a 1984 *Report and Order,* 49 FR 23628 (June 7, 1984), and a 1986 *First Report and Order,* 51 FR 26895 (July 28, 1986), to award the remaining cellular MSA and RSA licenses through lotteries. On January 31, 2001, the Commission adopted a *Notice of Proposed Rulemaking,* 66 FR 14101 (March 9, 2001), acknowledging that in four RSA markets no initial licensee had been granted.

5. In the Omnibus Budget Reconciliation Act of 1993 (1993 Budget Act), Congress added Section 309(j) to the Communications Act, authorizing the Commission to resolve mutually exclusive applications for use of the electromagnetic spectrum by auction. Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, Title VI, 6002(a), 107 Stat. 312, 387–92 (1993). In addition, Section 6002(e) of the 1993 Budget Act provided that: ''[t]he Federal Communications Commission shall not issue any license or permit [by lottery] after the date of enactment of this Act unless . . . one or more applications for such license were accepted for filing by the Commission before July 26, 1993.'' This provision left to the Commission's discretion whether to use auctions or lotteries for applications filed before July 26, 1993. Beginning in 1994, the Commission, in a *Memorandum Opinion and Order,* 59 FR 37163 (July 21, 1994), exercised its discretion and used lotteries, rather than auctions, to resolve already-pending mutually exclusive applications for cellular unserved areas filed prior to July 26, 1993.

6. On August 5, 1997, the 1997 Budget Act was signed into law, modifying the Commission's auction authority by amending Section 309(j) of the Communications Act to require that all mutually exclusive applications for initial licenses or construction permits be auctioned, with certain exceptions not applicable here. 1997 Budget Act, Public Law 105–33, 3002(a), 111 Stat. 251, 258–60 (1997) (amending 47 U.S.C. 309(j)). The 1997 Budget Act expressly repealed Section 6002(e) of the 1993 Budget Act, *id.* at 3002(a)(4), and terminated the Commission's authority to award licenses through random selection, even in the case of applications filed prior to July 26, 1993, except for licenses for noncommercial educational and public broadcast stations, *id.* at 3002(a)(2)(B). The Commission had found in the *Competitive Bidding Second Report and Order* that mutually exclusive applications for initial licenses to provide cellular service were auctionable under the auction authority provided by the 1993 Budget Act. Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Report and Order,* 59 FR 22980 (May 4, 1994), (*Competitive Bidding Second Report and Order*). Because the 1997 Budget Act terminated the Commission's remaining lottery authority, the Bureau dismissed all pending RSA lottery applications. *See* In the Matter of Certain Cellular Rural Service Area Applications, *Order,* 14 FCC Rcd 4619 (WTB 1999) (not published in the **Federal Register**) (dismissing applications in RSAs 332A (Polk, AR), 370A (Monroe, FL), 492A (Goodhue, MN), 582A (Barnes, ND), 615A (Bradford, PA), and 727A (Ceiba, PR)); In the Matter of Certain Cellular Rural Service Area Applications in Market Nos. 599A and 672A, *Order,* DA 99–814 (CWD rel. Apr. 29, 1999) (dismissing applications in RSAs 599A (Nowata, OK) and 672A (Chambers, TX)); In the Matter of Certain Rural Service Area Applications in Market Nos. 599A and 672A, *Order on Reconsideration,* DA 99–1426 (CWD rel. July 21, 1999) (reinstating applications of tentative selectees in those markets—Zephyr Tele-Link in RSA 599A and Alee in RSA 672A); In the Matter of Zephyr Tele-Link Application for a Construction Permit to Establish a Cellular System Operating on Frequency Block A in the Domestic Public Cellular Radio Telecommunications Service To Serve the Oklahoma 4-Nowata Rural Service Area, Market No. 599A, *Order* 15 RCC Rcd 4247 (CWD 2000) (granting application of Zephyr Tele-Link); In the Matter of Application of Alee Cellular Communications for Authorization to Construct Nonwireline Cellular System in Texas RSA 21 Market 672, *Memorandum Opinion and Order,* 15 FCC Rcd 2831(2000) (not published in the **Federal Register**) (recon. pending) (dismissing application of Alee) (*Alee Cellular*). Several of the applicants sought reconsideration of the Bureau's dismissal of the RSA applicants, and the Bureau declined to reconsider its actions. In the Matter of Certain Cellular Rural Service Area Applications, *Order,* 16 FCC Rcd 4619 (WTB 2001) (not published in the **Federal Register**) (affirming dismissals) (*March 2, 2001 Order*). Ranger Cellular and Miller Communications, Inc. have sought further reconsideration of the Bureau's dismissal of the applications, and High Tower Communications, Inc. has sought Commission review of the Bureau's action. Consolidated Petition for Reconsideration of Ranger Cellular and Miller Communications, Inc. (filed Mar. 30, 2001); Application for Review of High Tower Communications, Inc. (filed Apr. 2, 2001).

7. In the first dismissal order cited above, the Bureau also dismissed as moot CCPR's Petition requesting that we award licenses for the remaining RSA markets through competitive bidding. CCPR's Petition specifically requested that market 727A—Ceibo, Puerto Rico, be awarded through competitive bidding rather than through a second lottery. However, the CCPR Petition raised certain issues concerning the broader applicability of the use of competitive bidding for all markets where an initial lottery was held and the winner was disqualified. The Commission therefore treated the CCPR Petition as a petition for rulemaking and requested comment on awarding cellular licenses through competitive bidding for all remaining unlicensed RSAs. Although the Commission dismissed CCPR's Petition as moot because we are required by the 1997 Budget Act to award licenses through competitive bidding, we have considered, and are incorporating into the record of this proceeding, all comments and reply comments submitted in response to the CCPR Petition.

8. The four markets for which no initial license has been granted are:

332A—Polk, AR; 582A—Barnes, ND; 727A—Ceiba, PR; and 672A—Chambers, TX. These four markets are the subject of this *Report and Order.*

A. Need for and Objectives of the Report and Order

9. Congress enacted the Balanced Budget Act of 1997, which requires the Commission to resolve mutually exclusive applications for initial licenses through competitive bidding instead of random selection, with certain exceptions not applicable here. Accordingly, the Commission initiated this rulemaking in order to adopt rules for the granting of initial cellular RSA authorizations by means of competitive bidding. The Commission's objective in this rulemaking proceeding is to establish, for cellular RSA markets for which a tentative selectee has been disqualified, the applicable competitive bidding and licensing rules. Such rules are necessary in order to determine the classes of eligible entities as well as determine what policies, if any, should be adopted to promote participation by small business entities, consistent with the Commission's statutory obligation under Section 309 of the Communications Act of 1934, as amended, 47 U.S.C. 309.

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

10. No comments were submitted specifically in response to the IRFA. Some of the comments responding to the proposals contained in the *NPRM,* however, discussed issues that could affect small businesses. Two of the three commenters that addressed eligibility for the four cellular RSA licenses at issue generally supported permitting all eligible entities to apply for the licenses. *See Report and Order* at ¶¶ 8–21. The third commenter opposed such open eligibility (which would encompass small businesses), instead arguing that only entities that had filed lottery applications for these licenses in 1988 and 1989 *and* had appealed the dismissal of their lottery applications should be permitted to apply for these licenses (which would mean only three entities would be potentially eligible). *See Report and Order* at ¶¶ 8–21.

11. One commenter supported the proposals contained in the *NPRM* to provide bidding credits to small businesses to encourage them to bid on and win the cellular RSA licenses. *See Report and Order* at ¶¶ 27–33. Another commenter opposed adoption of such bidding credits on the basis that such credits would unfairly and uneconomically skew the auction in favor of smaller entities. *See Report and Order* at ¶¶ 27–33.

12. Regarding eligibility for the four cellular RSA licenses, the Commission determined in the *Report and Order,* that any entity otherwise qualified under the rules would be permitted to apply for any of the four RSA licenses. *See Report and Order* at ¶¶ 8–21. As explained in greater detail in the *Report and Order* and in Section E *infra,* the Commission concluded that permitting broad-based eligibility would best further the public interest as well as facilitate participation by small businesses.

13. Regarding the adoption of bidding credits for certain categories of small businesses, the Commission concluded that including such bidding credits as part of the cellular RSA application and bidding process would help to promote opportunities for small businesses. *See Report and Order* at ¶¶ 27–33. As explained in greater detail in the *Report and Order* and Section E *infra,* implementation of bidding credits facilitates the ability of small businesses to compete against larger entities and promotes economic opportunities for those small businesses.

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

14. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. *See* 5 U.S.C. 603(b)(3). The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisidiction.'' *Id.* 601(6). The term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act. *Id.* 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA at 15 U.S.C. 632.

15. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration). ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' 5 U.S.C. 601(5). As of 1992, there were approximately 85,006 such jurisdictions in the United States. 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimate that 81,600 (91 percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992.

16. According to recent telecommunications industry revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Services (PCS), which are placed together in that data. Trends in Telephone Service, Table 19.3 (March 2000). This data does not indicate how many of these 808 carriers fall within each of the revenue tiers defined by the Commission for the purpose of receiving bidding credits as some form of small business or entrepreneur. *See Report and Order* at ¶¶ 29–33. As described in the *Report and Order* and Section E *infra,* the Commission defined an ''entrepreneur'' as an entity with average annual gross revenues not exceeding $40 million for the preceding three years and provided a 15 percent bidding credit; a ''small business'' as an entity with average annual gross revenues not exceeding $15 million for the preceding three years and provided a 25 percent bidding credit; and a ''very small business'' as an entity with average annual gross revenues not exceeding $3 million for the preceding three years and provided a 35 percent bidding credit.

17. The Commission is required to estimate in this FRFA the number of small entities to which any new rules would apply, provide a description of such entities, and assess the impact of the rule on such entities. The rules adopted in the *Report and Order* will

apply to all entities that seek to obtain the subject licenses, including small entities. The number of entities that may apply to participate in these future auctions is unknown. Moreover, these entities might already be providers of cellular service or PCS or other wireless services, or they may have no current involvement in the wireless industry. To the extent that existing cellular or PCS operators would apply for the subject authorizations, the applicable NAICS code is 513322. Existing paging carriers, which might also be interested in these authorizations, fall under NAICS code 513321. Resellers of paging and cellular services are identified by NAICS code 51333.

18. The number of small businesses that have participated in prior auctions has varied. Small businesses, as defined under the Commission's rules in the context of various auctions for authorizations in specific services, have accounted for 1,667 out of a total of 2,096 qualified bidders in all prior auctions, not including broadcast auctions. As provided in Section 1.2110(c)(1) of the Commission's rules, and in conformity with the Small Business Act and the regulations of the Small Business Administration, the Commission establishes small business definitions for purposes of its auctions on a service-specific basis. *See* 47 CFR 1.2110(c)(1); 15 U.S.C. 632(c)(2)(c); 13 CFR 121.902(b). Statistics for broadcast license auctions are not available, and would be less relevant to the licenses at issue here. Given these statistics, the Commission expects a large percentage of participants in our auctions program generally to be small businesses in the future, although this may not be the case in this individual auction.

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

19. The Commission imposes no new reporting, recordkeeping, or other compliance requirements in the *Report and Order.* The only projected reporting and recordkeeping requirements that will apply in any auctions for the four cellular RSA authorizations are those that are already established by Commission regulations. Nothing in this rulemaking changes those regulations. The Commission will accept new license applications and use our general Part 1 competitive bidding rules to conduct the auction. These rules require all applicants to electronically submit FCC Form 175 in order to participate in the auction and, at the conclusion of the auction, all high bidders to electronically submit FCC Form 601 to apply for a license. *See* 47 CFR 1.2105(a), 1.2107(a). The purposes of these forms are to ensure that applicants are eligible to participate in the auction and that high bidders are eligible to hold the cellular RSA licenses at issue. The Office of Management and Budget has already approved both of these forms. FCC Form 175, OMB Control No. 3060–0600 (effective until Apr. 30, 2004); FCC Form 601, OMB Control No. 3060–0798 (effective until Mar. 31, 2002). In addition, under our Part 1 rules, any entity wishing to receive a bidding credit for serving qualifying tribal lands must comply with 47 CFR 1.2110(f)(3), an obligation also approved by the Office of Management and Budget. *See* 47 CFR 1.2110(f)(3).

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

20. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c)(1)-(4).

21. In the *Report and Order,* the Commission adopts rules to permit us to grant initial licenses in four cellular RSAs. In adopting these rules, the Commission considered the potential significant economic impact of the rules on small entities. Specifically, the Commission considered the impact of its eligibility definition on the ability of small businesses even to apply for the licenses at issue in this proceeding and to participate in the associated auctions. The Commission also considered the effect of the proposed bidding credits for three categories of small businesses on the ability of small businesses to compete successfully in the auctions and to build out a system should such businesses be awarded any of the licenses. As described in the *Report and Order* and Section E *infra*, the Commission defined an ''entrepreneur'' as an entity with average annual gross revenues not exceeding $40 million for the preceding three years and provided a 15 percent bidding credit; a ''small business'' as an entity with average annual gross revenues not exceeding $15 million for the preceding three years and provided a 25 percent bidding credit; and a ''very small business'' as an entity with average annual gross revenues not exceeding $3 million for the preceding three years and provided a 35 percent bidding credit.

22. Also, in proposing to apply the Commission's existing Part 1 competitive bidding rules to any auctions for these licenses, the Commission took into account their effect on small businesses.

23. The rules adopted by the *Report and Order* will affect all small entities that seek to acquire any of the four cellular RSA licenses discussed herein. The Commission believes that permitting all eligible entities to apply for the four licenses—instead of restricting eligibility to three applicants that filed lottery applications in 1988 and 1989—will promote opportunities for participation by small businesses. A greater number of small businesses will have the chance to seek the authorizations at issue.

24. The Commission has sought to promote small business ownership by defining three tiers of small businesses for the purposes of providing bidding credits to small entities: an ''entrepreneur'' is an entity with average annual gross revenues not exceeding $40 million for the preceding three years; a ''small business'' is an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and a ''very small business'' is an entity with average annual gross revenues not exceeding $3 million for the preceding three years. The Small Business Administration approved these proposed small business definitions on January 30, 2001. *See* Letter from Fred P. Hochberg, Acting Administrator, Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated Jan. 30, 2001 (*SBA Letter*). *See also* Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Gary M. Jackson, Assistant Administrator, Small Business Administration, dated Sept. 21, 2001. The bidding credits are 15 percent for entrepreneurs, 25 percent for small businesses, and 35 percent for very small businesses. The Commission specifically rejected arguments in opposition to the use of bidding credits for small businesses. As explained in the *Report and Order*, adoption of bidding credits for small businesses provides them with an opportunity to compete successfully against larger, well-financed bidders. *Report and Order*

at ¶ 32. The Commission believes the bidding credits it has adopted will benefit a range of small businesses.

25. The Commission will apply its Part 1 competitive bidding rules equally to all applicants for the licenses, including small businesses. Our Part 1 competitive bidding rules have been designed to ensure that small businesses are not placed at a disadvantage and have a full and fair opportunity to compete in fair auction proceedings. While these rules require small businesses to submit application forms in order to participate in the auctions for the subject licenses, the Commission believes that equitably applying the same rules to all entities helps to promote fairness in the process and to ensure that the auction is effective. Fair and effective auction proceedings benefit small businesses as well as all other participants.

I. Discussion

A. Eligibility for Licenses

26. *Background.* In the *NPRM,* the Commission proposed to allow all eligible entities to participate in an auction for the four cellular RSA licenses at issue in this proceeding. The Commission noted that the competitive bidding program seeks to award each license to the applicant that values it most highly and that is, therefore, most likely to offer valued service to the public. The Commission explained that excluding potential applicants that were not previously lottery applicants would be inconsistent with that goal. The Commission also recognized that, because nearly twelve years have passed since the closing of the original RSA filing window, a number of commenters that have expressed interest in participating in RSA auctions would not have had the opportunity to file applications, while some applicants that did file lottery applications may no longer exist. Finally, the Commission reasoned that, to the extent former lottery applicants continue to have an interest in applying for these markets, open eligibility allows them to do so.

27. In each of the four unlicensed RSAs, the Commission has granted interim operating authority to one or more cellular operators to provide cellular service on the Channel A block pending the ultimate permanent licensing of these RSAs. The Commission also specifically proposed to permit cellular operators that have been granted interim operating authority (IOA) in the four unlicensed RSAs to participate in the RSA auction. The Commission noted that although IOAs confer no interest or expectation of receiving a cellular license, IOA holders might have a substantial interest in bidding for permanent authorizations in markets where they may have been providing interim cellular service.

28. *Discussion.* After careful consideration, the Commission concludes that it is in the public interest to allow all entities, including current IOA holders and former lottery applicants, to participate in the RSA auction. In recent years, the Commission has generally favored open eligibility because the Commission believes that maximizing the pool of auction applicants helps to ensure that licenses are awarded to entities that value them most highly and are, therefore, most likely to offer prompt service to the public. *See, e.g., Competitive Bidding Second Report and Order*, 59 FR 22980 (May 4, 1994); Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 37.0–38.6 GHz and 38.6–40.0 GHz, *Report and Order and Second Notice of Proposed Rulemaking*, 12 FCC Rcd 18600, 18617–20, ¶¶ 30–35 (1997) (not published in the **Federal Register**); Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz, *Report and Order*, 15 FCC Rcd 22709, 22736–37, ¶¶ 54–56 (2000) (*BBA Report and Order*) (not published in the **Federal Register**). *But see, e.g., BBA Report and Order*, 15 FCC Rcd at 22737, ¶ 56 (not published in the **Federal Register**) (the Commission has authority to restrict eligibility in particular cases if such restrictions are consistent with our spectrum management responsibilities under Section 309(j)). The Commission has found that this approach to auction participation best fulfills the public interest objectives set forth in Section 309(j)(3) of the Communications Act. 47 U.S.C. 309(j)(3)(A)–(D). Further, the Commission does not believe that there are any compelling reasons to exclude potential participants in the upcoming RSA auction.

29. A number of commenters support open eligibility, particularly current IOA holders and entities that did not previously file lottery applications. With respect to eligibility, two of the four commenters that responded to the *Notice* support open eligibility. In addition, several commenters that responded to the CCPR Petition favored open eligibility. Cingular argues that permitting open eligibility will ensure that licenses are awarded to applicants that value them the most highly. Cingular specifically insists that the Commission allow IOA holders in the subject markets to apply for licenses. ALLTEL also supports the Commission's proposal to permit open eligibility. BANM asserts that open eligibility will expedite cellular service to the RSA markets. WWC urges the Commission to give all interested applicants an opportunity to provide cellular service in the RSAs. Century contends that the number of potential service providers has increased in the years since the closing of the original RSA filing window and that broadening auction participation would permit the best qualified and most highly motivated entities to compete.

30. Several commenters oppose open eligibility. Some of these commenters, such as Ranger and Miller, seek to restrict eligibility to former lottery applicants who continue to contest dismissal of their applications. One commenter responding to the *Notice* contends that the auction should be restricted to former lottery applicants. Commenters in response to the *CCPR Petition* also argue that the Commission should limit the auction to former lottery applicants. Other commenters argue that IOA holders should be barred from participating in the cellular RSA auction. These commenters generally contend that it is the Commission's policy, when it grants a party's application for IOA service, to dismiss that party's pending application for permanent authority for the subject market. AALA claims that an IOA holder would have an advantage over other applicants in an auction because it would have a ''unique ability'' to calculate the value of the license. In contrast, BANM and CCPR argue that the Commission's policy for excluding IOAs was implemented to avoid unfair advantage in the comparative hearing process and thus is not relevant when licenses are assigned by competitive bidding.

31. Several commenters cite to *Ashbacker Radio Corp.* v. *FCC*, 326 U.S. 327 (1945). See, e.g., AALA Comments at 14 (to allow one applicant to operate in a market under temporary authority poses a severe threat to the principles set forth in *Ashbacker*). We note that short-form applications to participate in competitive bidding are governed by Section 309(j), and not the procedural requirements of Sections 309(a), 309(b), or 309(e), or the *Ashbacker* doctrine, which requires a comparative hearing when competing applicants file conflicting license or construction

permit applications for the same authorization. See Elleron Oil Co. and WVI Partners, Inc. Petition for Reconsideration of Dismissal of Short-Form Applications for Interactive Video and Data Service Auction, *Order*, 13 FCC Rcd 17246, 17251–52, ¶ 9 (WTB 1998) (not published in the **Federal Register**). Section 309(j) does not require the Commission to use a notice and cut-off procedure or establish ''cut-off dates'' to invite mutually exclusive applications for a particular license. *See id*. at 17250, ¶ 8.

32. In determining eligibility for auction participation, the Commission is required by Section 309(j)(3) to promote certain public interest objectives. Those objectives include rapid deployment of new technologies and services to the public, promotion of economic opportunity and competition, recovery for the public of a portion of the value of the spectrum, and efficient and intensive use of the spectrum. 47 U.S.C. 309(j)(3)(A)–(D). The Commission believes that a policy of unrestricted eligibility in the RSA auction will best fulfill our public interest goals. Here, open eligibility has a higher probability of promoting the rapid delivery of services to the public than limited eligibility. This is because open eligibility increases the likelihood that all entities who have an interest in putting the license to use will participate in the auction. Among these, the bidder who is willing to pay the most will be highly motivated to rapidly put the license to a use that the public finds valuable because only such a use will make its investment worthwhile. Importantly, no commenter has presented evidence in this case that there are entities with market power whose participation might allow them to limit or reduce competition by their entry. In such a situation, permitting as many qualified bidders as possible allows competition and economic opportunity to flourish by reducing one barrier to market entry, potentially resulting in a more competitive applicant pool. In the absence of evidence of market failure, the market, and not regulation, should determine participation in competitive bidding here, and the Commission should allow the maximum number and types of bidders to participate in the auctions.

33. An important factor in our decision to permit open eligibility is that the licenses at issue in this proceeding will cover rural areas. Under Section 309(j)(4)(B), the Commission is required to encourage the rapid deployment of services specifically to rural areas. 47 U.S.C. 309(j)(4)(B). BANM also highlights the need for the provision of service in rural markets, stating that, ''[w]hile many urban markets have enjoyed cellular service for as long as thirteen years, these rural service areas have remained without a permanent nonwireline cellular licensee.'' The Commission believes that open eligibility will encourage participation in the RSA auction by entities that are most likely to be interested in, and capable of, serving rural areas.

34. Our decision to permit open eligibility in the RSA auction includes the participation of current IOA holders in the four unlicensed RSAs. The Commission's policy to dismiss applications for permanent status filed by IOA holders originated in the context of comparative hearings, based on the concern that the decision to grant a license in a comparative hearing would be biased in favor of an IOA holder because it had incurred substantial expenses in its temporary operations. *See* In re Applications of La Star Cellular Telephone Co. and New Orleans CGSA, Inc, *Memorandum Opinion and Order*, 4 FCC Rcd 3777 (1989) (not published in the **Federal Register**), *aff'd*, 899 F.2d 1233 (D.C. Cir 1990). *See Community Broadcasting Co.* v. *FCC*, 274 F.2d 753 (D.C. Cir. 1960) (an interim operator's expenditure of sizeable funds on its temporary operation would inevitably influence the Commission's final decision, no matter how much the Commission tried to eliminate this factor). The Commission declines to extend that policy to the competitive bidding process. IOA holders will not have an advantage over other bidders as they once had over other applicants in comparative hearings because, in an auction, licenses are assigned to the highest bidder, regardless of prior operating status. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *Memorandum Opinion and Order*, 14 FCC Rcd 8724, 8737–39, ¶¶ 23–26 (1999) (not published in the **Federal Register**) (the Commission rejected arguments that holders of interim authority have a comparative advantage in an auction process). As the Commission stated in the *NPRM*, although IOAs confer no entitlement to, or expectation of, receiving a cellular license, IOA holders may have a substantial interest in bidding for permanent authorizations in markets where they have been providing interim cellular service. Given our previously adopted policies and the record in this proceeding, the Commission concludes that current IOA holders should not be excluded from participating in the auction of licenses for the unlicensed RSAs on an equal basis with other applicants.

35. Joint commenters Ranger and Miller raise a variety of statutory and equitable arguments against open eligibility, none of which the Commission find persuasive. First, Ranger and Miller argue that Section 309(l) of the Communications Act of 1934, as amended, restricts eligibility for cellular radio licenses to lottery applicants that filed their applications prior to July 1997 and whose applications allegedly are ''unresolved.'' Section 309(l) provides in pertinent part that, with respect to competing applications for initial licenses for ''commercial radio and television stations'' that were filed with the Commission before July 1, 1997, the Commission shall treat the persons filing such applications as the only persons eligible to be qualified bidders. Public Law 105–33, 3002(a)(3), 111 Stat. 251, 260 (1997) (codified at 47 U.S.C. 309(l)). Ranger and Miller contend that the Commission's rules define cellular radio as a ''commercial mobile radio service'' and that, therefore, the reference to ''commercial radio'' in Section 309(l) includes cellular radio. Cingular disagrees with Ranger and Miller, asserting that the Commission should not view ''commercial radio'' and ''television stations'' as distinct, unrelated terms. Cingular maintains that the term ''commercial'' was intended to exclude *noncommercial educational radio and television* applications from the scope of Section 309(l) and from competitive bidding under Section 309(j)(2)(C).

36. The Commission agrees with Cingular's interpretation of the statutory language, which is plain on its face. The statute does not use ''commercial radio'' and ''television stations'' as distinct terms. Rather, the reference in the statute to ''commercial radio and television stations'' clearly refers to broadcast facilities. Where Congress has referred to wireless services like cellular in other provisions of the Communications Act of 1934, as amended, it has clearly used the term ''commercial mobile services.'' *See, e.g.*, 47 U.S.C. 253(e), 274(i)(2)(B), 332(c)(1), 332(d)(1). As the Supreme Court has explained, ''[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'' *Russello* v. *United States*,

464 U.S. 16, 23 (1983) (internal quotation marks omitted), citing *United States* v. *Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972). The legislative history also confirms that Section 309(l) applies only to commercial broadcast radio and television applications. The Conference Report specifically states that ''[n]ew section 309(l) of the Communications Act requires the Commission to use competitive bidding to resolve any mutually exclusive applications for *radio or television broadcast licenses* that were filed with the Commission prior to July 1, 1997.'' H.R. Conf. Rep. No. 217, 105th Cong., 1st Sess. at 573 (1997) (*Conference Report*) (emphasis added). The Commission has applied Section 309(l) only to pending comparative broadcast licensing cases. *See* Implementation of Section 309(j) of the Communications Act '' Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *First Report and Order*, 63 FR 48615 (Sept. 30, 1998) (*Broadcast First Report and Order*); recon. denied, 14 FCC Rcd 8724 (1999) (not published in the **Federal Register**); modified, 14 FCC Rcd 12541 (1999) (not published in the **Federal Register**); *See* In the Matter of Amendment of Section 73.202(B), FM Table of Allotments, FM Broadcast Stations, *Memorandum Opinion and Order*, 16 FCC Rcd 2272 (2001) (not published in the **Federal Register**).

37. Contrary to the claim of Ranger and Miller, *Bachow Communications, Inc.* v. *FCC* does not support the notion that Section 309(l) applies to cellular RSA applications as well as broadcast license applications. *Bachow Communications, Inc.* v. *FCC*, 237 F.3d 683 (D.C. Cir. 2001) (*Bachow*). *Bachow's* central holding instead is that license applications for 39 GHz service filed under a comparative hearing licensing scheme could be dismissed when the Commission shifted to an auction licensing scheme. *Bachow*, 237 F.3d at 686–688 (recognizing the ''Commission's authority to change license assignment allocation (*sic*) procedures midstream'' even though it disrupts expectations and alters the competitive balance among applicants). Ranger and Miller also cite the D.C. Circuit's opinion in *McElroy* to support their argument that the Commission cannot make the RSA licenses available to new applicants. *McElroy Electronics Corp.* v. *FCC*, 86 F.3d 248 (D.C. Cir. 1996) (*McElroy*). *McElroy* holds that when the Commission decides to process timely-filed applications, it generally may not also process competing applications filed out of time. *McElroy*, 86 F.3d at 253–259. Because we will permit open eligibility for the subject licenses, and all applications to participate in the auction will be newly filed, the *McElroy* decision is inapposite.

38. Ranger and Miller also offer up a litany of equitable arguments that they contend support artificially limiting eligibility. They argue that the Commission should limit the RSA applicant pool because the number of unresolved lottery applicants is small, the applications have been pending for thirteen years, the service rules for RSA licenses have not changed, and the lottery applicants did not have notice when they filed their applications that competitive bidding, rather than lotteries, might be used to assigned licenses. In addition, Ranger and Miller oppose open eligibility on the grounds that the Commission did not refund their lottery application filing fees, and that open eligibility will lead to delay and litigation.

39. Ranger and Miller fail to show how the public interest would be served by limiting the RSA auction to only three former lottery applicants. In fact, it is well-established that, regardless of when an application is filed, an applicant has no vested right to a continuation of the licensing procedures in effect at the time its application was filed. *See, e.g., Bachow*, 237 F.3d at 687–688; Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development of Paging Systems, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 64 FR 33762 (June 24, 1999); *Broadcast First Report and Order*, 13 FCC Rcd at 15937, ¶ 44 (not published in the **Federal Register**); Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, *Third Order on Reconsideration*, 13 FCC Rcd 4856, 4941, ¶ 195 (1998) (not published in the **Federal Register**), citing *Chadmoore Communications, Inc.* v. *FCC*, 113 F.3d 235, 240–41 (D.C. Cir. 1997). Moreover, there is no logical nexus between the length of time the applications were pending and the rationale for restricting eligibility to bid in the RSA auction. Similarly, the claim that the lottery applicants did not have any notice of possible rule changes at the time they filed their applications provides no reasonable rationale for the proposed narrowing of eligibility. The Commission's action declining to refund application filing fees neither gives the applications continued ''life'' nor justifies restrictions on eligibility. Finally, the Commission necessarily is guided by the public interest objectives set forth in Section 309(j)(3)(A)–(D) in setting application eligibility and not by concerns over the prospects of litigation and appeals. 47 U.S.C. 309(j)(3)(A)–(D).

40. Ranger and Miller Comments at 9, 12–13. Ranger and Miller argue that the Commission should restrict eligibility because Miller helped the Commission determine that a cellular RSA licensee was unqualified to hold a RSA license. Ranger and Miller Comments at 10–12. We disagree. Any action by Miller that may have led the Commission to such a determination is irrelevant to our decision whether we should, as a general rule, adopt open eligibility with respect to the four cellular RSA markets. We are obligated to promote the public interest, not individual applicants.

41. Ranger and Miller totally disregard the equities of other parties potentially interested in seeking the subject authorizations, as well as equitable considerations relevant to the public interest. As the Commission found above, adopting open eligibility—the antithesis of the licensing plan promoted by Ranger and Miller—for these licenses has a greater probability than limited eligibility of resulting in the rapid deployment of new technologies and services to the public, the possibility of competition and economic opportunity, and the efficient and intensive use of the spectrum. Such a result would promote the public interest, and therefore, open eligibility is warranted. In addition, it is important to recognize that there may be parties interested in providing cellular service in these markets, and qualified to do so, that did not even exist at the time the lottery applications were filed.

42. Finally, Ranger and Miller argue that an open eligibility policy in this context must necessarily be based on the potential for increased revenue to the Treasury. Section 309(j)(7)(B) does not preclude the Commission from adopting eligibility rules based on other considerations, even though such rules may also result in increased federal revenues. The purpose of open eligibility is not to maximize the amount of revenues raised in an auction but to ensure that licenses are awarded to those that value them most highly and that, therefore, will be most likely to provide rapid and efficient service to the public. Indeed, by asserting that auction revenues will be greater if they are forced to compete with a larger number of bidders, Ranger and Miller may be suggesting that they value the RSA licenses less highly than their potential competitors. Our determination to permit open eligibility in the RSA auction is based on our statutory obligations to promote

competition and rapid deployment of services to rural areas, not to enhance the Federal Treasury.

B. Market Areas To Be Auctioned

43. *Background.* In the *NPRM,* the Commission sought comment on whether the markets for which licenses are to be awarded through competitive bidding should be based on RSAs, or whether alternative licensing models should be considered. The Commission received two comments that supported licensing the markets on an RSA basis, and no party expressed opposition to that proposal.

44. *Discussion.* The Commission concludes that the remaining unlicensed cellular RSA markets should be licensed on an RSA basis under our Part 22 rules. As the Commission observed in the *NPRM,* the initial lotteries for the unlicensed markets were for RSAs as defined in 47 CFR 22.909 of our rules. To employ another market model for these RSAs would be potentially disruptive to adjacent cellular operations, as well as possibly impede the cost-effective buildout of facilities to serve the residents of these areas as well as transient users. The Commission also will, pursuant to 47 CFR 22.947, subject licenses awarded for these markets to the same construction and operational rules as licenses granted to prior RSA lottery winners, including the exclusive right of the auction winner to expand its system within that market for a period of five years. After the expiration of the five-year expansion period, any areas within the RSA that remained unserved would be available for licensing pursuant to 47 CFR 22.949 of our rules which governs unserved areas Phase I and Phase II filing procedures.

C. Competitive Bidding Procedures

1. Incorporation by Reference of Part 1 Standardized Auction Rules

45. *Background.* In the *Part 1 Third Report and Order,* the Commission streamlined its auction procedures by adopting general competitive bidding rules set forth in Part 1, Subpart Q, of the Commission's rules applicable to all auctionable services. Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, *Third Report and Order and Second Further Notice of Proposed Rule Making,* 62 FR 13540 (March 21, 1997) (modified by Erratum, DA 98–419 (rel. March 2, 1998)) *(Part 1 Third Report and Order).* The Commission clarified and amended these general competitive bidding procedures. Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making,* 65 FR 52323 (Aug. 29, 2000) (modified by Erratum, DA 00–2475, 65 FR 52401 (rel. Aug. 29, 2000)) *(Part 1 Order on Reconsideration)* (recons. pending). More recently, the Commission adopted modifications to Section 1.2105(c) of the Commission's rules, the competitive bidding ''anti-collusion rule.'' Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, WT Docket No. 97–82, *Seventh Report and Order,* 66 FR 54447 (Oct. 29, 2001). *See also* 47 CFR 1.2101 *et seq.* In the *NPRM*, the Commission proposed to conduct the auction of cellular RSA licenses in conformity with the general competitive bidding rules, including any amendments adopted in the *Part 1 Order on Reconsideration, Fifth Report and Order, and Fourth FNPRM,* 65 FR 52323 (August 29, 2000) proceeding. Specifically, the Commission proposed to employ the Part 1 rules governing competitive bidding design, designated entities, application and payment procedures, reporting requirements, collusion issues, and unjust enrichment. The Commission further stated that winning bidders would be eligible to obtain a bidding credit for serving qualifying tribal lands. *See* 47 CFR 1.2110(f)(3). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit after winning the auction when it files its long-form application. In this regard, we note that only one RSA subject to these proposals—RSA 582A-Barnes, ND—contains any federally recognized tribal lands. Finally, the *NPRM* contemplated that auction-related procedural matters such as the appropriate competitive bidding design for the RSA auction, as well as minimum opening bids and reserve prices, would be determined by the Bureau pursuant to its delegated authority prior to the start of the cellular RSA auction. *See* 47 CFR 0.131(c), 0.331, and 0.332; *see also* Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making,* 62 FR 13540 (March 21, 1997).

46. *Discussion.* The Commission adopts the proposal to conduct the auction for initial licenses in the four cellular RSAs in conformity with the general competitive bidding rules set forth in Part 1, Subpart Q, of the Commission's rules. The Commission believes that this decision to conduct the RSA auction in conformity with the standardized Part 1 rules will increase the efficiency of the competitive bidding process and provide specific guidance to auction participants.

47. Although the Commission received few comments on this issue, none of the commenters opposed the application of the general competitive bidding rules. One commenter, Cingular, favors application of the general competitive bidding rules to the RSA auction. In its comments, Cingular also requests that the bidding design ultimately selected not include combinatorial bidding, (Combinatorial bidding design allows for bids on combinations or packages of licenses.) arguing that it is inappropriate where no ''synergies'' exist among the markets in question. As indicated in the *NPRM*, the Bureau will seek comment by Public Notice on auction-related procedural issues, including the appropriate competitive bidding design, prior to the start of the cellular RSA auction. This approach will provide the Bureau with an opportunity to weigh the benefits and disadvantages of combinatorial bidding design, among other auction-specific issues.

2. Small Business Definitions and Bidding Credits

48. *Background.* In the *NPRM,* the Commission proposed to adopt special provisions for small businesses that participate in the auction for cellular RSA licenses. The Commission noted that the markets at issue could attract a wide range of entities and the adoption of bidding credits will help us meet our Congressional mandate to promote competition and to disseminate licenses among a wide variety of applicants. Accordingly, the Commission proposed to define an entrepreneur as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, a small business as an entity with average annual gross revenues for the preceding three years not exceeding $15 million, and a very small business as an entity with average annual gross revenues for the preceding three years not exceeding $3 million. The entrepreneur and small business definitions are consistent with the small business definitions we established for the broadband Personal Communications Services C and F blocks. We also proposed the definition of very small business for the RSA

auction because smaller businesses may be interested in acquiring licenses to provide service in these markets. The Small Business Administration approved these proposed small business definitions on January 30, 2001. *See SBA Letter.* The Commission further proposed, as provided in Section 1.2110(f)(2) of our rules, to offer entrepreneurs a bidding credit of 15 percent, small businesses a bidding credit of 25 percent, and very small businesses a bidding credit of 35 percent.

49. The Commission sought comment on whether the characteristics and capital requirements of cellular service call for a different approach. The Commission also asked commenters, to the extent that they propose additional provisions to ensure participation by businesses owned by minorities and women, to address how such provisions should be crafted to meet the relevant standards of judicial review.

50. *Discussion.* As the Commission tentatively concluded in the *NPRM,* it will adopt the following small business definitions and bidding credits: (1) An ''entrepreneur'' with average annual gross revenues for the preceding three years not exceeding $40 million will be eligible for a 15 percent bidding credit; (2) a ''small business'' with average annual gross revenues for the preceding three years not exceeding $15 million will be eligible for a 25 percent bidding credit; and (3) a ''very small business'' with average annual gross revenues for the preceding three years not exceeding $3 million will be eligible for a 35 percent bidding credit.

51. The Commission is not persuaded that large carriers are necessarily better suited to provide cellular RSA service. In any case, the Commission does not prescreen applicants' relative qualifications. Further, the Commission believes that competition between large and small entities will benefit subscribers in the rural markets. Also, the Commission is not persuaded that the adoption of bidding credits will, in any way, impede service to these areas. To the extent that, as ALLTEL suggests, cellular service is a national ''mature'' service dominated by large carriers, our decision to adopt bidding credits should help eliminate barriers to entry for small businesses, consistent with our statutory mandate. *See* 47 U.S.C. 309(j)(3)(B).

52. Finally, ALLTEL contends that the auction will be skewed toward smaller entities that receive an overly generous bidding credit, which will distort market valuation. While the Commission agrees that bidding credits provide small businesses with an advantage, Congress, in Section 309(j), specifically directed the Commission to promote economic opportunities for small businesses. The Commission further notes that bidding credits alone do not guarantee success; rather, they provide small businesses with an opportunity to successfully compete against larger, well-financed bidders. *See* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Report and Order and Further Notice of Proposed Rulemaking,* 62 FR 11616 (March 12, 1997). Because bidding credits are the best tool the Commission has to promote these opportunities, the Commission concludes that it is appropriate to adopt the special provisions for small businesses.

53. The Commission does adopt special preferences for entities owned by minorities or women. As the Commission did not receive any comments on this issue, the Commission does not have an adequate record to support such special provisions under the current standards of judicial review. *See Adarand Constructors* v. *Peña,* 515 U.S. 200 (1995) (requiring a strict scrutiny standard of review for Congressionally mandated race-conscious measures); *United States* v. *Virginia,* 518 U.S. 515 (1996) (applying an intermediate standard of review to a state program based on gender classification). The Commission believes the bidding credits adopted here for small businesses will further our objective of disseminating licenses among a wide variety of applicants. Furthermore, minority and women-owned entities that qualify as small businesses may take advantage of the special provisions.

D. Disposition of Alee's Argument Concerning Texas 21

54. In its comments, Alee has requested that RSA 672A (Texas 21—Chambers) not be included in any upcoming auction pending the outcome of its petition for reconsideration of an order denying its application in that market. For the reasons stated below, the Commission denies Alee's request and includes the Texas 21 RSA authorization among the markets to be subject to auction rules.

55. Alee requests that, if the Commission includes the Texas 21 authorization in the contemplated auction, the Commission gives notice to any potential bidder that any license won in that market would be subject to Alee's claim. If Alee ultimately prevails in the hearing process, the license will be awarded accordingly. If Alee does not prevail, then the Commission will have the necessary licensing rules and policies in place for the Texas 21 authorization without having to conduct another rulemaking proceeding. The Commission will ensure that interested parties are fully informed to the extent that Alee's claim remains unresolved.

E. IOA Operations

56. *Background.* Under the terms of each of the existing IOAs, the IOA operator must cease operations immediately upon initiation of service by the new licensee, provided that the new licensee gives at least 30 days written notice of its intent to provide service. The IOA condition specifically provides that ''[t]he interim operator must fully cooperate with the permanent licensee in effectuating a smooth transition to the provision of service in the market by the permanent licensee without *disruption* of service to the public. The interim operator must cease operations in the market on the date of initiation of permanent service or within 30 days of written notice by the permanent permittee to the interim operator of the day and time that it intends to initiate service, whichever date occurs later.'' In order to prevent unnecessary interruption of service to existing cellular customers, the Commission proposed in the *NPRM* that, in the event that any of the current IOA holders do not obtain the RSA license for their markets, they should be allowed to continue providing service on a temporary basis subject to these conditions, *i.e.,* until the auction winner provides the required notice and is prepared to commence service. Minimizing such interruptions while the auction winner establishes its service will also help to retain 911 access in the IOA service area. Cingular requests that the Commission clarify its rules to provide that interim operators may continue to operate until the auction winner is prepared to commence service in that particular part of the market where the IOA holder is operating in order to avoid disruption in service to the public.

57. *Discussion.* Because of the nature of these markets and carrier buildout practices, the Commission anticipates the auction winner will not initially provide coverage throughout the entire market. As a result, the auction winner may or may not initiate service in the area where the public currently is receiving service from the IOA holder. The Commission will require the IOA holder to ''pull back'' its service area boundaries (SAB) to eliminate any overlap with the auction winner's own

SAB, and to terminate service in the RSA upon notice from the auction winner that the latter is extending coverage into the area served under the IOA. The Commission feels that this will best serve the public interest by preventing localized disruptions in service during the transition period.

II. Final Regulatory Flexibility Analysis

A. Procedural Matters

1. Final Regulatory Flexibility Analysis

58. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* in this docket. *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. The comments received are discussed above. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

59. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603, the Final Regulatory Flexibility Analysis (FRFA) is set forth above. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

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

B. Ordering Clauses

61. Pursuant to 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 309(j), Part 22, 47 CFR *is Amended* as specified in the rule changes and the auctions for Markets 322A—Polk, AR, 592A—Barnes, ND, 727A—Ceiba, PR, and 672A—Chambers, TX be conducted under Part 1, Subpart Q of the Commission's rules, 47 CFR 1.2101 *et seq.,* and that all eligible parties be permitted to participate in the bidding.

62. The rules and policies adopted in this Report and Order shall become effective April 15, 2002.

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

List of Subjects in 47 CFR Part 22

Rural areas.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

For the reasons discussed in the preamble, part 22 of title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICES

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

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

2. Section 22.228 is added to Subpart B to read as follows:

§ 22.228 Cellular rural service area licenses subject to competitive bidding.

Mutually exclusive initial applications for Cellular Rural Service Area licenses are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this part.

3. Section 22.229 is added to Subpart B to read as follows:

§ 22.229 Designated entities.

(a) *Eligibility for small business provisions.* (1) A very small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.

(3) An entrepreneur is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $40 million for the preceding three years.

(4) A consortium of very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section. A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(2) of this section. A consortium of entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(3) of this section.

(5) For purposes of determining whether an entity meets any of the definitions set forth in paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered in the manner set forth in § 1.2110(b) and (c) of this chapter.

(b) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

4. Section 22.969 is added to Subpart H to read as follows:

§ 22.969 Cellular RSA licenses subject to competitive bidding.

Mutually exclusive applications for initial authorization for the following Cellular Rural Service Areas filed after the effective date of this rule are subject to competitive bidding procedures as prescribed by Sections 22.228 and 22.229: 332A—Polk, AR; 582A—Barnes, ND; 672A—Chambers, TX; and 727A—Ceiba, PR.

[FR Doc. 02–6110 Filed 3–13–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252 and Appendix I to Chapter 2

[DFARS Case 2001–D006]

Defense Federal Acquisition Regulation Supplement; DoD Pilot Mentor-Protege Program

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 807 of the National Defense Authorization Act for Fiscal Year 2001. Section 807 adds women-owned small businesses to the types of concerns that may participate as protege firms in the DoD Pilot Mentor-Protege Program.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–0350. Please cite DFARS Case 2001–D006.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements Section 807 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). Section 807 adds women-owned small businesses to the types of concerns that may participate as protege firms in the DoD Pilot Mentor-Protege Program. This rule also clarifies that business concerns owned and controlled by an Indian tribe or a Native Hawaiian organization are eligible to participate as protege firms in the Program.

DoD published an interim rule at 66 FR 47108 on September 11, 2001. DoD received one comment on the interim rule. The comment did not recommend any change to the rule. Therefore, DoD is converting the interim rule to a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis. Interested parties may obtain a copy of the analysis from the point of contact specified herein. The analysis is summarized as follows: This rule permits women-owned small businesses to participate as protege firms in the DoD Pilot Mentor-Protege Program. The objective of the rule is to provide an opportunity for women-owned small businesses to enhance their capabilities and increase their participation in Government and commercial contracts. Presently, there are 3,471 women-owned small business concerns that do business with DoD. Since the inception of the Mentor-Protege Program, 160 mentor firms and 509 protege firms have participated in the Program. Each protege firm must provide annual data to its mentor firm, for submission to the Government, regarding the progress of the protege firm in employment, revenues, and participation in DoD contracts. DoD received no comments in response to the initial regulatory flexibility analysis.

C. Paperwork Reduction Act

The information collection requirements of the DoD Pilot Mentor-Protege Program have been approved by the Office of Management and Budget under Control Number 0704–0332, for use through March 31, 2004.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 219 and 252 and Appendix I to Chapter 2, which was published at 66 FR 47108 on September 11, 2001, is adopted as a final rule without change.

[FR Doc. 02–5950 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

[DFARS Case 2001–D016]

Defense Federal Acquisition Regulation Supplement; Partnership Agreement Between DoD and the Small Business Administration

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a partnership agreement between DoD and the Small Business Administration (SBA). The partnership agreement streamlines procedures for contract awards under SBA's 8(a) Program.

DATES: Effective date: March 14, 2002.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before May 13, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite DFARS Case 2001–D016 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Angelena Moy, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2001–D016.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, (703) 602–1302.

SUPPLEMENTARY INFORMATION:

A. Background

A partnership agreement between DoD and SBA, dated February 1, 2002, permits DoD to award 8(a) contracts directly to 8(a) concerns, on behalf of SBA. The partnership agreement replaced a memorandum of understanding, which also permitted direct award of 8(a) contracts, and which was implemented in DFARS Subpart 219.8. This interim rule amends DFARS Subpart 219.8 to reflect the provisions of the new partnership agreement. The amendments include the following:

1. Emphasis that SBA remains the prime contractor on all 8(a) contracts, continues to determine eligibility of concerns for contract award, and retains appeal rights under Section 19.810 of the Federal Acquisition Regulation. SBA delegates to DoD only the authority to sign contacts on its behalf.

2. For negotiated acquisitions, authorization for the contracting officer to submit a request for an eligibility determination on all firms in the competitive range if discussions are to be conducted, or on all firms with a realistic chance of award if no discussions are to be conducted. Previously, the contracting officer

submitted eligibility determinations on no more than three of the most highly rated offerors.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to 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, *et seq.*, because the rule affects only the administrative procedures used for award of contracts under the 8(a) Program. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001–D016.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements a partnership agreement between DoD and SBA. The agreement streamlines procedures for awards under SBA's 8(a) Program by authorizing DoD to award contracts directly to 8(a) concerns. The partnership agreement became effective on February 1, 2002. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 219 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 219 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

2. Section 219.800 is revised to read as follows:

219.800 General.

(a) By Partnership Agreement (PA) dated February 1, 2002, between the Small Business Administration (SBA) and the Department of Defense (DoD), the SBA delegated to the Under Secretary of Defense (Acquisition, Technology, and Logistics) its authority under paragraph 8(a)(1)(A) of the Small Business Act (15 U.S.C. 637(a)) to enter into 8(a) prime contracts, and its authority under 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. However, the SBA remains the prime contractor on all 8(a) contracts, continues to determine eligibility of concerns for contract award, and retains appeal rights under FAR 19.810. The SBA delegates only the authority to sign contracts on its behalf. Consistent with the provisions of this subpart, this authority is hereby redelegated to DoD contracting officers within the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia, to the extent that it is consistent with any dollar or other restrictions established in individual warrants. This authority expires on September 30, 2004.

(b) Contracts awarded under the PA may be awarded directly to the 8(a) participant on either a sole source or competitive basis. An SBA signature on the contract is not required.

(c) Notwithstanding the PA, the contracting officer may elect to award a contract pursuant to the provisions of FAR Subpart 19.8.

3. Section 219.804–2 is revised to read as follows:

219.804–2 Agency offering.

(1) For requirements processed under the PA cited in 219.800 (but see paragraph (2) of this subsection for procedures related to purchase orders that do not exceed the simplified acquisition threshold), the notification to the SBA must clearly indicate that the requirement is being processed under the PA. All notifications should be submitted in writing, using facsimile or electronic mail, when possible, and must specify that—

(i) Under the PA, an SBA acceptance or rejection of the offering is required within 5 working days of receipt of the offering; and

(ii)(A) For sole source requirements, an SBA acceptance must include a size verification and a determination of the 8(a) firm's program eligibility, and, upon acceptance, the contracting officer will solicit a proposal, conduct negotiations, and make award directly to the 8(a) firm; or

(B) For competitive requirements, upon acceptance, the contracting officer will solicit offers, conduct source selection, and, upon receipt of an eligibility verification, award a contract directly to the selected 8(a) firm.

(2) Under the PA cited in 219.800, no separate agency offering or SBA acceptance is needed for requirements that are issued under purchase orders that do not exceed the simplified acquisition threshold. After an 8(a) contractor has been identified, the contracting officer must establish the prices, terms, and conditions with the 8(a) contractor and must prepare a purchase order consistent with the procedures in Part 213 and FAR Part 13, including the applicable clauses required by this subpart. No later than the day that the purchase order is provided to the 8(a) contractor, the contracting officer must provide to the cognizant SBA Business Opportunity Specialist, using facsimile, electronic mail, or any other means acceptable to the SBA district office—

(i) A copy of the signed purchase order; and

(ii) A notice stating that the purchase order is being processed under the PA. The notice also must indicate that the 8(a) contractor will be deemed eligible for award and will automatically begin work under the purchase order unless, within 2 working days after SBA's receipt of the purchase order, the 8(a) contractor and the contracting officer are notified that the 8(a) contractor is ineligible for award.

(3) The notification to SBA must identify any joint venture proposed for performance of the contract. SBA must approve a joint venture before award of an 8(a) contract involving the joint venture.

(4) For competitive requirements for construction to be performed overseas, submit the notification to SBA Headquarters.

219.804–3 [Amended]

4. Section 219.804–3 is amended by removing ''MOU'' and adding in its place ''PA''.

5. Section 219.805–2 is amended by revising paragraph (c) introductory text and paragraph (c)(ii) to read as follows:

219.805–2 Procedures.

(c) For requirements processed under the PA cited in 219.800—

* * * * *

(ii) For negotiated acquisitions, the contracting officer may submit a request for an eligibility determination on all firms in the competitive range if discussions are to be conducted, or on all firms with a realistic chance of award if no discussions are to be conducted.

219.806 [Amended]

6. Section 219.806 is amended as follows:

a. In the introductory text, by removing ''MOU'' and adding in its place ''PA'';

b. In paragraph (1), by removing ''shall'' and adding in its place ''must''; and

c. In paragraph (2), in the last sentence, by removing ''shall'' and adding in its place ''must''.

219.808–1 [Amended]

7. Section 219.808–1 is amended in the introductory text by removing ''MOU'' and adding in its place ''PA''.

219.811–1 [Amended]

8. Section 219.811–1 is amended as follows:

a. In paragraph (a), in the first sentence, by removing ''MOU'' and adding in its place ''PA'' and by removing ''shall'' and adding in its place ''must'';

b. In paragraph (a), in the second and last sentences by removing ''shall'' and adding in its place ''must''; and

c. In paragraph (b) introductory text, by removing ''MOU'' and adding in its place ''PA''.

219.811–2 [Amended]

9. Section 219.811–2 is amended by removing ''MOU'' and adding in its place ''PA'' and by removing ''shall'' and adding in its place ''must''.

219.811–3 [Amended]

10. Section 219.811–3 is amended in paragraphs (1) and (2) by removing ''MOU'' and adding in its place ''PA''.

219.812 [Amended]

11. Section 219.812 is amended in paragraph (d), in the first sentence, by removing ''MOU'' and adding in its place ''PA''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 252.219–7009 is amended by revising the clause date, paragraph (a), and paragraph (c) introductory text to read as follows:

252.219–7009 Section 8(a) direct award.

As prescribed in 219.811–3(1), use the following clause:

Section 8(a) Direct Award (Mar 2002)

(a) This contract is issued as a direct award between the contracting office and the 8(a) Contractor pursuant to the Partnership Agreement dated February 1, 2002, between the Small Business Administration (SBA) and the Department of Defense. Accordingly, the SBA, even if not identified in Section A of this contract, is the prime contractor and retains responsibility for 8(a) certification, for 8(a) eligibility determinations and related issues, and for providing counseling and assistance to the 8(a) Contractor under the 8(a) Program. The cognizant SBA district office is:

_____

_____

_____

_____

[*To be completed by the Contracting Officer at the time of award*]

* * * * *

(c) The 8(a) Contractor agrees that—

* * * * *

[FR Doc. 02–5952 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2002–D006]

Defense Federal Acquisition Regulation Supplement; Restriction on Acquisition of Vessel Propellers

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify that the statutory restriction on acquisition of vessel propellers from foreign sources applies only to DoD contracts that use fiscal year 2000 or 2001 funds.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002-D006.

SUPPLEMENTARY INFORMATION:

A. Background

The restriction on acquisition of vessel propellers at DFARS 225.7020 implements Section 8064 of the DoD Appropriations Act for Fiscal Year 2001 (Public Law 106–259). Section 8064 provides that no funds appropriated in fiscal year 2000 or 2001 may be used for the procurement of vessel propellers other than those produced by a domestic source and of domestic origin. The DoD Appropriations Act for Fiscal Year 2002 (Public Law 107–117) contains no such provision. Therefore, this final rule amends DFARS 225.7020 to clarify that the restriction applies only to DoD contracts that use fiscal year 2000 or 2001 funds.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2002-D006.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 225 is amended as follows:

1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7020–4 is amended by revising the introductory text to read as follows:

225.7020–4 Contract clause.

Use the clause at 252.225–7023, Restriction on Acquisition of Vessel Propellers, in solicitations and contracts that use fiscal year 2000 or 2001 funds

for the acquisition of vessels or vessel propellers, unless—

* * * * *

[FR Doc. 02–5949 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 226

[DFARS Case 2001–D007]

Defense Federal Acquisition Regulation Supplement; Preference for Local 8(a) Contractors—Base Closure or Realignment

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify policy pertaining to preferences for local businesses in acquisitions that support a base closure or realignment. The rule clarifies that both competitive and noncompetitive acquisitions under the Section 8(a) Program are permitted if an eligible 8(a) contractor is located in the vicinity of the base to be closed or realigned.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–0350. Please cite DFARS Case 2001–D007.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 226.7103 to clarify policy pertaining to preferences for local businesses in acquisitions that support a base closure or realignment. The present policy permits award under the Section 8(a) Program if ''the 8(a) contractor'' is located in the vicinity of the base to be closed or realigned. This rule amends the text to permit use of 8(a) procedures if ''at least one eligible 8(a) contractor'' is located in the vicinity. This change clarifies the intent of the policy, which is to permit both competitive and noncompetitive 8(a) acquisitions in support of a base closure or realignment. A similar clarifying amendment is made to the text pertaining to set-asides for small business concerns.

DoD published a proposed rule at 66 FR 47158 on September 11, 2001. DoD received no comments on the proposed rule. Therefore, DoD is adopting the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will 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, *et seq.*, because the rule merely clarifies existing policy pertaining to acquisitions made in support of a base closure or realignment.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 226

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 226 is amended as follows:

1. The authority citation for 48 CFR Part 226 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

2. Section 226.7103 is amended by revising paragraph (c) to read as follows:

226.7103 Procedure.

* * * * *

(c) If offers can be expected from business concerns in the vicinity—

(1) Consider section 8(a) only if at least one eligible 8(a) contractor is located in the vicinity.

(2) Set aside the acquisition for small business only if at least one of the expected offers is from a small business located in the vicinity.

[FR Doc. 02–5951 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR part 237

[DFARS Case 2001–D018]

Defense Federal Acquisition Regulation Supplement; Performance of Security Functions

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1010 of the USA Patriot Act. Section 1010 provides an exception to the prohibition on contracting for security functions at a military installation or facility. The exception applies during the period of time that United States armed forces are engaged in Operation Enduring Freedom and 180 days thereafter.

DATES: *Effective date:* March 14, 2002.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before May 13, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2001–D018 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra Haberlin, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2001–D018.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2465 prohibits DoD from entering into contracts for the performance of firefighting or security-guard functions at military installations or facilities, unless certain exceptions apply. Section 1010 of the USA Patriot Act (Public Law 107–56) adds another exception to this prohibition, to apply during the period of time that United States armed forces are engaged in Operation Enduring Freedom and 180 days thereafter. The exception permits award of contracts for security functions to proximately located local and State governments. This interim rule amends DFARS 237.102–70 to implement Section 1010 of Public Law 107–56.

This rule was not subject to Office of Management and Budget review under

Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to 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, *et seq.*, because the rule applies only to military installations and facilities and proximately located local and State governments. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001–D018.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 1010 of the USA Patriot Act (Public Law 107–56). Section 1010 permits DoD to enter into contracts for the performance of security functions at military installations and facilities during the period of time that United States armed forces are engaged in Operation Enduring Freedom and 180 days thereafter. Section 1010 became effective on October 26, 2001. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 237 is amended as follows:

1. The authority citation for 48 CFR part 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 237—SERVICE CONTRACTING

2. Section 237.102–70 is amended by adding paragraph (c) to read as follows:

237.102–70 Prohibition on contracting for firefighting or security-guard functions.

* * * * *

(c) Under Section 1010 of Public Law 107–56, this prohibition does not apply to any contract that'

(1) Is entered into during the period of time that United States armed forces are engaged in Operation Enduring Freedom or during the period 180 days thereafter;

(2) Is for the performance of security functions at any military installation or facility in the United States;

(3) Is awarded to a proximately located local or State government, or a combination of such governments, whether or not any such government is obligated to provide such services to the general public without compensation; and

(4) Prescribes standards for the training and other qualifications of local government law enforcement personnel who perform security functions under the contract in accordance with criteria established by the Secretary of the department concerned.

[FR Doc. 02–5953 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–U

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1515, 1533 and 1552

[FRL–7155–7]

Acquisition Regulation: Administrative Changes and Technical Amendments

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this rule to amend the EPA Acquisition Regulation (EPAAR) to eliminate two EPAAR requirements in order to streamline the EPA contracting process. The first requirement relates to the detail required in the EPA contracting officer's source selection decision. The second requirement relates to EPA contracting officer duties if there is a contractor appeal of a final decision of the contracting officer. In addition, technical amendments are being made to the EPAAR solicitation provision entitled ''Procedures for Participation in the EPA Mentor-Protege Program.''

DATES: This rule is effective on June 12, 2002 without further notice, unless EPA receives adverse comments by April 15, 2002. If we receive adverse comments, we will, before the rule's effective date, publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be submitted to Larry Wyborski, US Environmental Protection Agency, Office of Acquisition Management (3802R), 1200 Pennsylvania Avenue, NW., Washington, DC 20004, or electronically at: *wyborski.larry@epamail.epa.gov.*

FOR FURTHER INFORMATION CONTACT: Larry Wyborski, U.S. Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Avenue, NW, Ariel Rios Building, Washington, DC 20004, (202) 564–4369, *wyborski.larry@epamail.epa.gov*

SUPPLEMENTARY INFORMATION:

A. Background

EPA's Office of Acquisition Management established a Procurement Guidance Work Group to assess EPA acquisition policies and recommend changes where appropriate. Among the recommendations were two changes to the EPAAR to eliminate requirements which either: (1) Duplicate other Federal Regulations, or (2) outline unnecessary procedural requirements for EPA contracting officers. Specifically, EPAAR 1515.308–71 provides procedural requirements for documentation in source selection decisions over and above those required by Federal Acquisition Regulation (FAR) 15.308. The EPA Procurement Guidance Work Group determined these additional procedural requirements are not necessary, and therefore should be removed from the EPAAR. The Procurement Guidance Work Group also determined that EPAAR 1533.212, Contracting Officer's duties upon appeal, essentially duplicate procedures set forth in 43 CFR part 4 (Department of Interior Board of Contract Appeals Regulations) and should therefore be removed from the EPAAR.

In addition, technical amendments are being made to the solicitation provision at EPAAR 1552.219–71, Procedures for Participation in the Mentor-Protege Program, in order to bring the provision into compliance with statutory language. Specifically, since Pub. L. 102–389 (EPA's 1993 Appropriations Act) did not require certain restrictions on the mentor-protege program previously specified in the provision, these restrictions have been eliminated.

B. Executive Order 12866

This is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs, within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

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

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

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

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

E. 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 their regulatory actions on State, local, and Tribal governments, and the private sector. This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risk.

G. Executive Order 13132

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'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

H. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and tribal 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 direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, as specified in Executive Order 13175. The rule in an acquisition regulation that is technical and administrative in nature. Thus, Executive Order 13175 does not apply to this rule.

I. National Technology Transfer and Advancement Act of 1995

EPA will use voluntary consensus standards, as directed by 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), in its procurement activities when applicable. The NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering use of any voluntary consensus standards. EPA welcomes comments on this aspect of the rule making, and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

K. Submission to Congress and the General Accounting Office

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 rules 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 48 CFR Parts 1515, 1533 and 1552

Government procurement.

Therefore, 48 CFR chapter 15 is amended as set forth below:

1. The authority citation for parts 1515, 1533 and 1552 is revised to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

1515.308–71 [Removed]

2. 1515.308–71 is removed.

1553.212 [Removed]

3. Section 1533.212 is removed.

4. Section 1552.219–71 is revised to read as follows:

1552.219–71 Procedures for Participation in the EPA Mentor-Protege Program.

As prescribed in 1519.203(b), insert the following provision:

PROCEDURES FOR PARTICIPATION IN THE EPA MENTOR-PROTEGE PROGRAM **(Oct 2000)**

(a) This provision sets forth the procedures for participation in the EPA Mentor-Protege Program (hereafter referred to as the Program). The purpose of the Program is to increase the participation of concerns owned and/or controlled by socially and economically disadvantaged individuals as subcontractors, suppliers, and ultimately as prime contractors; to establish a mutually beneficial relationship between these concerns and EPA's large business prime contractors (although small businesses may participate as Mentors); to develop the technical and corporate administrative expertise of these concerns, which will ultimately lead to greater success in competition for contract opportunities; to promote the economic stability of these concerns; and to aid in the achievement of goals for the use of these concerns in subcontracting activities under EPA contracts. If the successful offeror is accepted into the Program they shall serve as a Mentor to a Protege firm(s), providing developmental assistance in accordance with an agreement with the Protege firm(s).

(b) To participate as a Mentor, the offeror must receive approval in accordance with paragraph (h) of this section.

(c) A Protege must be a concern owned and/or controlled by socially and economically disadvantaged individuals within the meaning of section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 673(a)(5) and (6)), including historically black colleges and universities. Further, in accordance with Public Law 102–389 (the 1993 Appropriation Act), for EPA's contracting purposes, economically and socially disadvantaged individuals shall be deemed to include women.

(d) Where there may be a concern regarding the Protege firm's eligibility to participate in the program, the protege's eligibility will be determined by the contracting officer after the SBA has completed any formal determinations.

(e) The offeror shall submit an application in accordance with paragraph (k) of this section as part of its proposal which shall include as a minimum the following information.

(1) A statement and supporting documentation that the offeror is currently performing under at least one active Federal contract with an approved subcontracting plan and is eligible for the award of Federal contracts;

(2) A summary of the offeror's historical and recent activities and accomplishments under any disadvantaged subcontracting programs. The offeror is encouraged to include any initiatives or outreach information believed pertinent to approval as a Mentor firm;

(3) The total dollar amount (including the value of all option periods or quantities) of EPA contracts and subcontracts received by the offeror during its two preceding fiscal years. (Show prime contracts and subcontracts separately per year);

(4) The total dollar amount and percentage of subcontract awards made to all concerns owned and/or controlled by disadvantaged individuals under EPA contracts during its two preceding fiscal years. If recently required to submit a SF 295, provide copies of the two preceding year's reports;

(5) The number and total dollar amount of subcontract awards made to the identified Protege firm(s) during the two preceding fiscal years (if any).

(f) In addition to the information required by paragraph (e) of this section, the offeror shall submit as a part of the application the following information for each proposed Mentor-Protege relationship:

(1) Information on the offeror's ability to provide developmental assistance to the identified Protege firm and how the assistance will potentially increase contracting and subcontracting opportunities for the Protege firm.

(2) A letter of intent indicating that both the Mentor firm and the Protege firm intend to enter into a contractual relationship under which the Protege will perform as a subcontractor under the contract resulting from this solicitation and that the firms will negotiate a Mentor-Protege agreement. The letter of intent must be signed by both parties and contain the following information:

(i) The name, address and phone number of both parties;

(ii) The Protege firm's business classification, based upon the NAICS code(s) which represents the contemplated supplies or services to be provided by the Protege firm to the Mentor firm;

(iii) A statement that the Protege firm meets the eligibility criteria;

(iv) A preliminary assessment of the developmental needs of the Protege firm and the proposed developmental assistance the Mentor firm envisions providing the Protege. The offeror shall address those needs and how their assistance will enhance the Protege. The offeror shall develop a schedule to assess the needs of the Protege and establish criteria to evaluate the success in the Program;

(v) A statement that if the offeror or Protege firm is suspended or debarred while performing under an approved Mentor-Protege agreement the offeror shall promptly give notice of the suspension or debarment to the EPA Office of Small Disadvantaged Business Utilization (OSDBU) and the

contracting officer. The statement shall require the Protege firm to notify the Contractor if it is suspended or debarred.

(g) The application will be evaluated on the extent to which the offeror's proposal addresses the items listed in paragraphs (e) and (f) of this section. To the maximum extent possible, the application should be limited to not more than 10 single pages, double spaced. The offeror may identify more than one Protege in its application.

(h) If the offeror is determined to be in the competitive range, or is awarded a contract without discussions, the offeror will be advised by the contracting officer whether their application is approved or rejected. The contracting officer, if necessary, may request additional information in connection with the offeror's submission of its revised or best and final offer. If the successful offeror has submitted an approved application, they shall comply with the clause titled ''Mentor-Protege Program.''

(i) Subcontracts of $1,000,000 or less awarded to firms approved as Proteges under the Program are exempt from the requirements for competition set forth in FAR 44.202–2(a)(5), and 52.244–5(b). However, price reasonableness must still be determined and the requirements in FAR 44.202–2(a)(8) for cost and price analysis continue to apply.

(j) Costs incurred by the offeror in fulfilling their agreement(s) with a Protege firm(s) are not reimbursable as a direct cost under the contract. Unless EPA is the responsible audit agency under FAR 42.703–1, offerors are encouraged to enter into an advance agreement with their responsible audit agency on the treatment of such costs when determining indirect cost rates. Where EPA is the responsible audit agency, these costs will be considered in determining indirect cost rates.

(k) Submission of Application and Questions Concerning the Program.

The application for the Program for Headquarters and Regional procurements shall be submitted to the contracting officer, and to the EPA OSDBU at the following address: Socioeconomic Business Program Officer, Office of Small and Disadvantaged Business Utilization, U.S. Environmental Protection Agency, Ariel Rios Building (1230A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564–4322, *Fax:* (202) 565–2473.

The application for the Program for RTP procurements shall be submitted to the contracting officer, and to the Small Business Specialist at the following address: Small Business Program Officer, RTP Procurement Operations Division (E105–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, *Telephone:* (919) 541–2249, Fax: (919) 541–5539.

The application for the Program for Cincinnati procurements shall be submitted to the contracting officer, and to the Small Business Specialist at the following address: Small and Disadvantaged Business Utilization Officer, Cincinnati Procurement Operations Division (CPOD-Norwood), U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Telephone: (513) 487–2024 *Fax:* (513) 487–2004.

(End of provision)

Dated: February 28, 2002.

Judy S. Davis,

Director, Office of Acquisition Management.

[FR Doc. 02–5743 Filed 3–13–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI35

Endangered and Threatened Wildlife and Plants: Listing the Desert Yellowhead as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), determine *Yermo xanthocephalus* (desert yellowhead) to be threatened under the authority of the Endangered Species Act of 1973, as amended. This plant is a recently described Wyoming endemic known only from the south end of Cedar Rim on the summit of Beaver Rim in southern Fremont County, Wyoming. It is known from a single population with plants found scattered over an area of 20 hectares (50 acres). The total area actually occupied by the population is only 3.37 hectares (8.33 acres) within the 20 hectares. In 2001 this population contained 11,967 plants and existed entirely on Federal lands. Surface disturbances associated with oil and gas development, compaction by vehicles, trampling by livestock, and randomly occurring, catastrophic events threaten the existing population.

EFFECTIVE DATE: April 15, 2002.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 4000 Airport Parkway, Cheyenne, WY 82001.

FOR FURTHER INFORMATION CONTACT: Mike Long, Field Supervisor, Wyoming Field Office (see **ADDRESSES** section), telephone 307/772–2374; facsimile (307) 772–2358.

SUPPLEMENTARY INFORMATION:

Background

Yermo xanthocephalus was discovered by Wyoming botanist Robert Dorn while conducting field work in the Beaver Rim area of central Wyoming in 1990. Dorn discovered a small population of an unusual species of Composite (Asteraceae). Dorn's closer examination revealed that the species was unknown to science and represented a new genus. Dorn (1991) named his discovery *Y. xanthocephalus*, or literally ''desert yellowhead.''

Yermo xanthocephalus is a tap-rooted, glabrous (hairless) perennial herb with leafy stems to 30 centimeters (cm) (12 inches (in)) high. The leathery leaves are alternate, lance-shaped to oval, 4 to 25 cm (1.5 to 10 in) long and often folded along the midvein. Leaf edges are smooth or toothed. Flower heads are many (25 to 180) and crowded at the top of the stem. Each head contains four to six yellow disk flowers (ray flowers are absent) surrounded by five yellow, keeled involucre (whorled) bracts (small leaves beneath the flower). The pappus (the outer whorl of flowering parts) consists of many white bristles.

The species is restricted to shallow deflation hollows in outcrops of Miocene sandstones of the Split Rock Formation (Van Houten 1964). These wind-excavated hollows accumulate drifting snow and may be more mesic (moist) than surrounding areas. The vegetation of these sites is typically sparse, consisting primarily of low-cushion plants and scattered clumps of Indian ricegrass (*Stipa hymenoides*).

Dorn observed approximately 500 plants within 1 hectare (2.5 acres) in 1990 on Federal land managed by the Bureau of Land Management (BLM). Surveys conducted since 1990 by Richard Scott, Curator of the Central Wyoming College Herbarium in Riverton, have failed to locate additional populations on outcrops of the White River, Wagon Bed, and Wind River formations in the Beaver Rim area. The estimate of the plant population's size has increased from 500 in 1990 to 11,967 plants in 2001. However, Dorn's original estimate of 500 plants was a visual estimate and did not include 2 nearby subpopulations, while Scott has been counting all plants in all 3 subpopulations using a monitoring grid. Therefore, the difference in estimates may be largely the result of different techniques used over differing acreages and cannot be assumed to show a significantly increasing trend in population size between 1990 and 2001. Based upon Scott's data collected from 1995 through 2001, the actual population count has increased from 9,293 in 1995 to 11,967 in 2001, possibly in response to higher than normal precipitation over the study period (R. Scott, Central Wyoming College, pers. comm., 2001).

Previous Federal Action

In the plant notice of review published on September 30, 1993 (58 FR 51144), we designated *Yermo xanthocephalus* a Category 2 species for potential listing under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). At that time, Category 2 species were those for which data in our possession indicated listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support a proposed rule. On February 28, 1996, we published a Notice of Review in the **Federal Register** (61 FR 7596) that discontinued the designation of Category 2 species as candidates, and this species was upgraded to candidate status at that time. A candidate is a species for which we possess substantial information on biological vulnerability and threats to support preparation of a listing proposal.

On November 24, 1997, we received a petition from the Biodiversity Legal Foundation and Biodiversity Associates alleging that *Yermo xanthocephalus* warranted emergency listing. On December 22, 1997, we notified the petitioners that emergency listing was not appropriate because BLM regulations provided some conservation measures for the species, and current exploratory oil and gas activities near the known occupied habitat of *Y. xanthocephalus* were being coordinated with our staff in the Wyoming Field Office. In addition, we notified the petitioners that petitions for candidate species are considered second petitions, because candidate species are species for which we have already decided that listing is warranted. Therefore, no 90-day finding was required for Biodiversity Legal Foundation's petition.

The proposed rule to list *Yermo xanthocephalus* as threatened was published in the **Federal Register** on December 22, 1998 (63 FR 70745). With a **Federal Register** publication on September 5, 2000 (65 FR 53691), we reopened the comment period. In the same publication, we sought comments regarding a draft conservation agreement, assessment, and strategy submitted by BLM for our consideration when making this listing decision. The conservation agreement, assessment, and strategy was never finalized or signed and has not been considered as a firm commitment to perform the actions when assessing conservation commitments in making this listing decision.

On August 9, 1999, BLM segregated (proposed withdrawal of) 3,759.12 acres surrounding the population of *Yermo xanthocephalus* for 2 years from location and entry under the General Mining Act of 1872, and from settlement, sale, location, and entry under the general land laws (64 FR 43209). However, this segregation expired on August 9, 2001, with no finalized withdrawal in place.

On November, 12, 2001, Biodiversity Legal Foundation, Biodiversity Associates, Center for Native Ecosystems, and Wyoming Outdoor Council filed a complaint in the U.S. District Court of Colorado alleging that the Service failed to make a timely final listing determination and critical habit designation for *Yermo xanthocephalus*.

Summary of Comments and Recommendations

In the December 22, 1998, proposed rule (63 FR 70745) we requested that all interested parties submit factual reports and information that might contribute to the development of this final rule. The comment period for the proposed rule was open from December 22, 1998, through February 22, 1999. On September 5, 2000, the comment period was reopened (65 FR 53691) to accommodate the public notice requirement of the Act, consider any new scientific information, and allow for comments on the draft conservation agreement submitted by BLM. We published legal notices in the ''Casper Star Tribune'' on September 5, 2000, and in the ''Riverton Ranger'' and the ''Lander Journal'' on September 6, 2000. The reopened comment period closed October 5, 2000.

During the initial comment period, 12 sets of comments were received. During the reopened comment period, we received 3 sets of comments regarding the proposed listing action. Additionally, 4 sets of comments were received by BLM regarding its draft conservation agreement, assessment, and strategy. We had no requests for a public hearing during either comment period. Of the comments we received, 8 supported, 3 opposed, and 4 were neutral regarding the proposed threatened status for *Yermo xanthocephalus*.

We updated the final rule to reflect comments and information we received during the comment period. We address opposing comments and other substantive comments concerning the rule below.

Issue 1: Yermo xanthocephalus warrants endangered status, not threatened status.

Response: As mentioned above, the population of Yermo xanthocephalus has increased from 9,293 individuals in 1995 to 11,967 individuals in 2001. The future existence of the species is threatened by potential oil and gas development and other factors, including its extremely limited range. Although we believe the species is likely to become endangered in the foreseeable future if the threats to the habitat are realized, the population has shown stability since 1995. Additionally, the population occurs on Federal land and BLM is cooperating with interested parties to conserve the plant. A monitoring and research program is being implemented as well. As a result, *Y. xanthocephalus* does not meet the definition of an endangered species under the Act because it is not in imminent danger of extinction in the foreseeable future. Therefore, listing as threatened is appropriate.

Issue 2: Listing of *Yermo xanthocephalus* is not warranted since the population has increased from 500 plants in 1990 to an estimated 15,000 plants in 1998.

Response: The proposed rule did indicate that the population contained an estimated 15,000 plants. The actual population size (based upon counting of all plants) was 11,635. The population has fluctuated between 9,293 and 13,244 since 1995, with the 2001 population being comprised of 11,927 individual plants. However, a meaningful comparison of the recent numbers with Dorn's initial estimate is not possible. The 1990 estimate of 500 plants made by Dorn was based purely on a visual estimate of 1 subpopulation within 1 hectare (2.5 acres). Subsequent surveys since 1995 by Dick Scott have involved counting all plants in all three subpopulations. It is not possible to make trend estimates comparing such different survey methods implemented on disparate acreages.

Issue 3: Listing *Yermo xanthocephalus* will draw attention to its location and increase the risk of harm through vandalism or collection. Similarly, critical habitat designation is not prudent because it will increase these risks.

Response: We remain concerned that publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers could increase the vulnerability of this plant to incidents of collection, general vandalism, and trampling by curiosity-seekers. However, we do not believe the listing of *Yermo xanthocephalus* increases the likelihood of such activities. The general location of *Y. xanthocephalus* is widely known by

many citizens. At this time we have no specific evidence of taking, vandalism, collection or trade of this species. We do not believe listing the species will increase this threat. Additionally, in the absence of specific evidence, we cannot conclude that designation of critical habitat would not be prudent based on increased threat. See the Critical Habitat section below for more detailed discussion of this issue.

Issue 4: Livestock use of the area and associated potential adverse effects to *Yermo xanthocephalus* are not characterized correctly.

Response: We have adjusted our description of livestock use in the area to better reflect information provided during the comment period. We acknowledge that livestock grazing may not currently be resulting in significant adverse effects to the *Yermo xanthocephalus* population. However, we believe a low level of adverse effect is occurring with the potential to become more significant in the future.

Issue 5: The existing data contain significant gaps and the Service should complete studies prior to making a listing determination.

Response: We thoroughly reviewed all scientific data available on *Yermo xanthocephalus* in preparing the proposed rule. We contacted experts and reviewed data collected since intensive population monitoring began in 1995. We based our opinion on the best scientific and commercial data available, as required by section 4(b)(1) of the Act. We have reviewed this information and any new information available since the date of the proposed rule in making this final listing decision.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we requested the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to supportive biological and ecological information in the proposed rule. The purpose of such review is to ensure that the listing decision is based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. Two of the specialists responded with comments. We have incorporated their comments into the final rule, as appropriate, and summarized their observations below.

One reviewer questioned the adequacy of the Act to appropriately protect *Yermo xanthocephalus* without making it more vulnerable to collectors and vandals. Additionally, the reviewer believed that certain land use changes (such as restriction of cattle and wildlife grazing) might be detrimental to the plant.

The second reviewer believed the evidence supported listing *Yermo xanthocephalus* as either threatened or endangered. The reviewer provided information regarding unsuccessful attempts to locate *Y. xanthocephalus* in other suitable habitat and indicated it is unlikely other populations of *Y. xanthocephalus* will be found. This reviewer expressed concerns regarding the likelihood that adequate funding and commitment will be provided to implement the BLM conservation strategy for the species. Additionally, the reviewer indicated a need for captive propagation and establishment of new populations as necessary conservation measures that should be implemented.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Yermo xanthocephalus* (desert yellowhead) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range:* The entire known range of *Yermo xanthocephalus* consists of an area of 20 hectares (50 acres) in southern Fremont County, Wyoming. Surveys conducted since 1990 have failed to find additional populations, although there are a number of sites with similar soils, drainage and plant associations in the area. Surveys conducted since 1995 by Dr. Ron Hartman in similar potential habitat within the North Platte watershed, Washakie basin, Great Divide basin, and Green River basin have proved equally unsuccessful in locating additional populations (W. Fertig, University of Wyoming, *in litt.*, 1999). The plant is easily recognized during its summer flowering season, so it seems likely that surveys would have found additional populations if they exist. Therefore, the species is vulnerable to extinction from even small-scale habitat degradation due to its small population size and limited geographic range.

The known population is threatened by surface disturbances associated with recreation, oil and gas development, mineral extraction, trampling by livestock, and soil compaction by vehicles (Fertig 1995). Recreational off-road vehicle use presents a threat to *Yermo xanthocephalus* through the crushing of plants and compaction or erosion of soil. This threat is greatest in the spring and summer when plants are in flower or heavy with fruit. No physical barriers prevent vehicle use in the immediate area of the *Y. xanthocephalus* population. The known population is several miles from Wyoming State Highway 135 and other maintained roads. In 1996, Highway 135 had an estimated daily traffic of 360 vehicles (Wyoming Department of Transportation 1996). A two-track, four-wheel drive trail leading to an abandoned oil well bisects the population, and is open to hunters or other recreationists using four-wheel drive trucks and other smaller all-terrain vehicles (ATVs). The most common activities that attract users to the area are hunting, rock collecting, and searching for human artifacts (such as arrowheads). The population is a few miles north of the Sweetwater Crossing on the Oregon-California Trail, which is a popular tourist attraction. There has been no significant surface disturbance caused by vehicles during the past 6 years that the site has been under study (R. Scott, Central Wyoming College, pers. comm., 2001). However, Scott (2000) has noted light vehicular traffic and fresh tire tracks in the site. The BLM Resource Management Plan limits vehicle use to existing roads (including established two-tracks), but the potential for habitat and plant destruction by ATVs remains a threat.

Oil and gas development also threaten the known population. In 1997, BLM leased for oil and gas development a 1,160-acre tract (designated WYW140702) that encompasses the *Yermo xanthocephalus* population. An adjacent lease (WYW138846) consisting of 2,080 acres was purchased by the same operator in May 1996. Both leases are for a 10-year period, and no specific lease stipulations were included to protect the plant. Construction of well pads, access roads, and pipelines through occupied habitat would result in direct destruction or crushing of plants and soil compaction and erosion. The 1920 Mineral Leasing Act promotes maximum recovery of Federal mineral resources. However, the 1987 Amendments to the Mineral Leasing Act (30 U.S.C. 226(g)) require lessees to have an approved operating plan that protects surface resources prior to submitting Applications for Permission to Drill. The BLM regulations provide that

species that are candidates for listing under the Act be afforded protection.

The current lessee is aware that the plant exists in the area, and has been very cooperative with BLM staff. The current drilling plan proposes exploration in locations that should not pose a threat to *Yermo xanthocephalus*, but the current operator is free to sell its leases to other companies that could revise the drilling plan. An existing two-track road leading to an abandoned oil well currently bisects the only population of *Y. xanthocephalus*. Redrilling of abandoned wells in search of producing formations that may have been previously overlooked is a common technique used during oil and gas exploration. Permits to drill can be conditioned by BLM to provide some protection to sensitive species by requiring a proposed drill pad be relocated up to 200 meters (656 feet). Candidate, proposed, and listed species can be protected by prohibiting surface occupancy in known populations.

Although the current oil and gas exploratory wells pose no threat to *Yermo xanthocephalus,* the discovery of an oil or gas pool on the lease areas would precipitate field developments that would introduce new threats to the plant and its habitat. In-field development could involve up to eight wells per section, depending on the characteristics of the producing formations. This intensified drilling activity would result in a new network of additional roads and well pads, and more human intrusion into what is now a remote area.

Seismic explorations for oil and gas producing formations also present a threat to *Yermo xanthocephalus* and its habitat through use of explosives, direct trampling, and soil compaction. However, these activities were carried out in the lease area during the early 1990s, so a permit application for further exploration is not likely. In addition, seismic explorations on BLM surface now require environmental analysis prior to permitting, and BLM will protect occupied *Y. xanthocephalus* habitat from damage if a request for further exploration is received (J. Kelly, BLM, pers. comm., 1998).

The known *Yermo xanthocephalus* population is located in an area managed by BLM's Lander Field Office, and locatable mineral resources, such as gold and uranium, are known to exist in that part of Wyoming. Private parties can stake a mining claim, explore for, and extract locatable minerals in accordance with the 1872 General Mining Law, and such activity could jeopardize the known population of *Y. xanthocephalus.* Uranium and zeolites, a locatable mineral with properties useful in water softening, manufacturing of catalysts, and pollution control, are found in the Beaver Rim area. Zeolites also may have marketability for use in processes to remove radioactive products from radioactive wastes (Bureau of Land Management 1986). The BLM's authority to regulate mineral claims under the 1872 General Mining Law is limited, although mining activities in areas with 5 or more acres of surface disturbance of unpatented BLM land are required to have an approved operating plan under 43 CFR 3809. Although the staking of locatable mineral claims on or near the plant's habitat is not likely, official withdrawal of the area from locatable mineral claims would remove this threat.

Livestock grazing also may present a threat to *Yermo xanthocephalus* habitat, which is within an existing grazing allotment. Although Fertig (1995) indicated livestock appear to use the *Y. xanthocephalus* habitat primarily as a travel corridor between adjacent sagebrush-grassland pastures, the area is actually a large pasture and livestock trampling of plants occurs only as cattle casually move along ''cow trails'' or two-tracks while grazing or moving to water. Scott (2000) noted signs of moderate horse traffic adjacent to the site. There are no existing barriers to prevent livestock access to the habitat. Fencing of the area would protect the plants from this threat, but also would probably result in a change in the associated plant community in the habitat. This change could result in unanticipated adverse impacts to the survival of *Y. xanthocephalus.*

B. *Overutilization for commercial, recreational, scientific, or educational purposes: Yermo xanthocephalus* is vulnerable to over-collecting conducted for scientific or educational purposes because of its small extant population size and habitat. The leaves of *Y. xanthocephalus* contain a chemical that produces a mild numbing sensation in the human mouth when even tiny portions are tasted (R. Scott, pers. comm., 1998). This could indicate potential medicinal qualities that could prove attractive to pharmaceutical companies, but the potential for this to be a threat to the existing population is currently unknown.

C. *Disease or predation:* Cattle graze in the immediate vicinity of occupied Yermo xanthocephalus habitat, but observation on the site indicate that the plant is not palatable to grazers. Tracks reveal that domestic and wild animals grazing the area spit out *Y. xanthocephalus* leaves and flowers after tasting (R. Scott, pers. comm., 1998). Predation of *Y. xanthocephalus* fruit by insects does occur, and in 1990 fruit production appeared low because of insect predation. However, it is unknown whether or not the extent of current predation differs from historical levels. Therefore, the degree of threat that this factor poses to the species is unknown.

D. *The inadequacy of existing regulatory mechanisms:* The State of Wyoming has no endangered species act or other laws to provide protection to plant species. The current BLM Lander Resource Management Plan (RMP), which covers the known population of *Yermo xanthocephalus,* was approved in 1987, 3 years prior to the species' discovery. Therefore, the plan does not specifically mention the species. The RMP protects special status plant species in general across the entire Resource Area, and provides no-surface-occupancy restrictions for threatened and endangered species impacted by oil and gas development. As *Y. xanthocephalus* is not currently listed, and no specific stipulations were included with the current oil and gas leases, attempts by BLM to restrict activities by imposing conditions during the application to drill stage are appealable by the operator. On April 9, 2001, BLM approved a list of sensitive species occurring on BLM properties in Wyoming. The list is intended to heighten awareness of the conservation needs of the species and encourage protective measures where possible. However, there are no protective measures mandated for the species. Additionally, *Y. xanthocephalus* is not currently on the sensitive species list and would have to be officially added.

E. *Other natural or manmade factors affecting its continued existence:* Species with small population size and restricted distribution are vulnerable to extinction by natural processes and human disturbance (Levin et al. 1996). Random events causing population fluctuations or population extirpations become a serious concern when the number of individuals or the geographic distribution of the species is very limited. A single human-caused or natural environmental disturbance could destroy the entire population of *Yermo xanthocephalus.*

This species physically occupies an area of 3.37 hectares (8.33 acres), and while the total number of plants known to exist through actual counting of each plant has increased from 9,293 in 1995 to 11,967 in 2001 (with a high of 13,244 in 2000), this increase may be due to higher than normal precipitation during study years (R. Scott, Central Wyoming

College, pers. comm., 2001). The establishment of this species is probably episodic and dependent on suitable spring and summer moisture conditions (Fertig 1995). Total fruit production appeared low due to heavy herbivory by insects and drought-induced abortion in 1990 (Dorn 1991). Dorn further speculated that in typical years recruitment of seedlings is probably extremely low or nil. However, observations since then have not supported that reproduction is necessarily low or that heavy herbivory by insects causes low reproduction. Drought-induced abortion has not been studied (Bureau of Land Management 1998). A decrease in population size from 12,099 plants in 1997 to 11,635 plants in 1998 may have been due to overall decreased precipitation (R. Scott, Central Wyoming College, pers. comm., 2001). A similar decrease in population size from 13,244 plants in 2000 to 11,967 in 2001 was noted and seems to have coincided with decreased precipitation. Therefore, a series of drought years could result in a severe reduction in population size and eventual extinction.

As described by Fertig (1995), the species is characterized by a long-lived perennial growth form, adaptation to severe habitats, and low annual reproductive output. This low reproductive output makes the species increasingly vulnerable to extinction due to chance events as population size declines, because it is unlikely that the species will exhibit a high rate of population growth, even if environmental conditions improve after such an event.

In addition to the above factors, threats to *Yermo xanthocephalus* are increased when people use the occupied area for recreational purposes. For example, erosion or trampling of plants is possible due to hikers or off-road vehicle use. The species occurs on barren sites with less than 25 percent total vegetative cover, and may be intolerant of competition (Fertig 1995). Competition from plants not native to the area would pose a greater threat than competition from species with which *Y. xanthocephalus* has evolved. Non-native plants that might outcompete *Y. xanthocephalus* could be introduced to the area if their seeds are carried in on the footwear or clothing of recreationists.

An additional threat that affects *Yermo xanthocephalus* is that posed by its small population size. Populations of plants that remain very small for several generations or that have gone through a past episode of rapid population decline may lose much of their previous genetic variability (Godt et al. 1996). When a population's genetic variability falls to low levels, its long-term persistence may be jeopardized because its ability to respond to changing environmental conditions is reduced. In addition, the potential for inbreeding depression increases, which means that fertility rates and survival rates of offspring may decrease. Although environmental and demographic factors usually supercede genetic factors in threatening species viability, inbreeding depression and the low genetic diversity may enhance the probability of extinction of rare plant species (Levin et al. 1996).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Yermo xanthocephalus* in determining to issue this final rule. Based on this evaluation, the preferred action is to list *Y. xanthocephalus* as threatened. Although the population has increased since 1995, the future existence of the species is still threatened by potential oil and gas in-field development and by its extremely limited habitat and population size. While not in immediate danger of extinction, *Y. xanthocephalus* is likely to become an endangered species in the foreseeable future if the threats to the habitat are realized and if present threats posed by small population size and limited geographic range continue to exist. We have determined that threatened status would provide adequate protection from the described threats. As the species occurs only on Federal surface, a classification as endangered, if warranted, would provide no additional level of protection.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency (see Available Conservation Measures section). As such, designation of critical habitat may affect activities on Federal lands and may affect activities on non-Federal lands where such a Federal nexus exists. Under section 7 of the Act, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of a species or result in destruction or adverse modification of critical habitat. However, both jeopardizing the continued existence of a species and adverse modification of critical habitat often have similar standards and thus similar thresholds for violation of section 7 of the Act.

Critical habitat designation, in some situations, may provide some value to the species by identifying areas important for species conservation and calling attention to those areas in special need of protection. Critical habitat designation of unoccupied habitat also may benefit these species by alerting permitting agencies to potential sites for reintroduction and allowing them the opportunity to evaluate proposals that may affect those areas.

In the proposed rule, we found that the designation of critical habitat for *Yermo xanthocephalus* was not prudent because the minimal benefits of such designation would be far outweighed by the increase of threats from over collection or other human activities. We believed critical habitat designation would provide no additional benefit to the species beyond that conferred under sections 7 and 9 of the Act by listing. We indicated protection of *Y. xanthocephalus* would be most effectively addressed through the recovery process under section 4 of the Act and the consultation process under section 7 of the Act, and the current interagency coordination processes.

Given the extremely limited range of *Yermo xanthocephalus,* we believed any case of adverse modification of its habitat also would constitute jeopardy

for the taxon. The designation of critical habitat for the purpose of informing Federal agencies of the location of occupied *Y. xanthocephalus* habitat was not thought to be necessary because BLM currently permits the surveys and monitoring of the only extant population. *Yermo xanthocephalus* is not known to have previously existed on any other sites. If future management actions include unoccupied habitat, the Service believed any benefit provided by designation of such habitat as critical would be conferred more effectively and efficiently through the current coordination process.

In the proposed rule, we indicated vandalism and unauthorized collection of *Yermo xanthocephalus* could be a significant threat to the species' survival and recovery, because of the plant's rarity and the fact that it is a monotypic genus. Critical habitat designation would require publication of the legal description of the 20 hectares (50 acres) habitat site in the **Federal Register**, providing information that might encourage collectors.

We received two comments agreeing with our prudency determination based upon possible adverse effects from collecting if the location of the plant is disclosed. Two commenters also expressed concern that the listing alone may draw attention to the plant's location and possibly lead to adverse effects from collection or vandalism.

Recent court decisions (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)) have forced us to reevaluate our ''not prudent'' finding. The *Conservation Council* ruling is particularly relevant to our determination. In that case, the court held that in order to conclude that designation would increase the risk to the species, the Service must have evidence of specific threats (such as instances of collection and vandalism) that would be increased by designation of critical habitat. The court said that without species-specific evidence, the fact that there are few plants and that even a single taking could cause the species to become extinct was not sufficient justification for a ''not prudent'' finding based on increased threat.

We remain concerned that publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers could increase the vulnerability of this plant to incidents of collection, general vandalism, and trampling by curiosity-seekers. Due to the relatively low numbers of individuals, small area covered by the population, and the inherent transportability of plants, *Yermo xanthocephalus* is vulnerable to collection and other disturbance. However, at this time we have no specific evidence of taking, vandalism, collection or trade of this species. This may be due to its fairly recent description as a new species to science and its remote location. Nonetheless, in the absence of specific evidence, we cannot conclude that designation would not be prudent based on increased threat.

Without a finding that critical habitat would increase threats to a species, then designation would be prudent if it would provide any benefits to the species. As to benefits of designation on Federal land, the court ruled in *Conservation Council of Hawaii* v. *Babbitt* that if even as a general rule an action that would adversely modify critical habitat was likely to jeopardize the continued existence of the species, the Service must consider the adverse modification/jeopardy relationship for each species individually. The court also ruled that designation of critical habitat on any type of land serves to educate the public and government officials that this habitat is essential to the protection of the species.

With this taxon, designation of critical habitat may provide some minor benefits. The primary regulatory effect of critical habitat designation is to require Federal agencies to consult before taking any action that could destroy or adversely modify critical habitat. A critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome, because an action that destroys or adversely modifies such critical habitat also would be likely to result in jeopardy to the species. However, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include designated unoccupied habitat or occupied habitat that may become unoccupied in the future. No such habitat is known at this time, but some may be found in the future. Additionally, there will be educational or informational benefits from designating critical habitat.

Reevaluating our prudency determination under the standards mandated by court decisions, we find that designation of critical habitat for *Yermo xanthocephalus* is prudent. However, our budget for listing activities is currently insufficient to allow us to immediately complete all the listing actions required by the Act. Listing *Y. xanthocephalus* as threatened without designation of critical habitat will allow us to concentrate our limited resources on other listing actions that must be addressed, while allowing us to invoke the protections needed for the conservation of this species without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without critical habitat designations when it is essential that such determinations be promptly published. We will prepare a critical habitat designation in the future at such time when our available resources and priorities allow.

Available Conservation Measures

Conservation measures provided to a species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, local and private agencies, groups, and individuals. The Act provides for possible land acquisition, cooperation with the States, and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities impacting listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Thus, the Act will require BLM to evaluate potential impacts to *Yermo xanthocephalus* that may result from activities it authorizes or permits, such as oil and gas development, grazing, and

recreational use. No special land management designations or conservation agreements currently exist to provide special protection for *Y. xanthocephalus.* Section 43 U.S.C. 1712(c)(3) allows BLM to protect tracts as Areas of Critical Environmental Concern (ACEC). Designation of the plant's habitat as an ACEC is a long process and would not, in itself, afford the species protection, unless a management plan for the ACEC identified the protective measures to be put in place. The BLM has prepared a draft conservation agreement, assessment, and strategy which outlines management, inventory, and monitoring actions to be taken to ensure the conservation of this species. However, the draft has not been finalized or signed.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked ''Of Cultivated Origin.'' Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. We anticipate that few trade permits will ever be sought or issued for *Yermo xanthocephalus* because the species is not in cultivation or common in the wild. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (telephone (303) 236–7400, facsimile (303) 236–0027).

We adopted a policy on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on future and ongoing activities within a species' range. We believe that based upon the best available information, the actions listed below would not result in a violation of section 9 of the Act provided these activities are carried out in accordance with existing regulation and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, range management, rodent control, mineral development, road construction, human recreation, pesticide application, controlled burns) and construction/maintenance of facilities (e.g., fences, power lines, pipelines, utility lines) when such activity is conducted according to any reasonable and prudent measures given by the Service in a consultation conducted under section 7 of the Act; and

(2) Casual, dispersed human activities on foot (*e.g.,* bird watching, sightseeing, photography, and hiking).

The actions listed below may potentially result in a violation of section 9 of the Act; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal Lands;

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities, such as changes in land use, will constitute a violation of section 9 should be directed to the Wyoming Field Office (see **ADDRESSES** section).

Required Determinations

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared concerning regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new requests or requirements for collection of information, other than those associated with permits, already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget control number 1018–0094, which is valid through July 31, 2004. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

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Author

The primary author of this proposed rule is Mary Jennings of the Wyoming Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
FLOWERING PLANTS						
*	*	*	*	*	*	*
Yermo xanthocephalus	Desert yellowhead	U.S.A. (WY)	T	723	NA	NA
*	*	*	*	*	*	*

Dated: March 8, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–6134 Filed 3–13–02; 8:45 am]

BILLING CODE 4310–55–P

Rules and Regulations

Federal Register
Vol. 67, No. 50
Thursday, March 14, 2002

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 75

[Docket Number LS–01–07]

Increase in Fees for Voluntary Federal Seed Testing and Certification Services and Establishment of a Fee for Preliminary Test Reports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the hourly fee rate charged for voluntary Federal seed testing and certification services and establishing a fee for issuing preliminary test reports. The fee rate is increased to cover increases in salaries of Federal employees, rent, supplies, replacement equipment, and other increased Agency costs. A new fee is established to recover the cost of providing preliminary test reports.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC–East, Beltsville, Maryland 20725–2325; Telephone: (301) 504–9430, Fax: (301) 504–8098; e-mail: *Richard.Payne2@usda.gov.*

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

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

B. Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this action on small entities. It has determined that its provisions will not have a significant economic impact on a substantial number of small entities.

The AMS provides, under the authority of the Agricultural Marketing Act (AMA) of 1946, a voluntary, user-fee funded seed testing and certification service to approximately 65 businesses per year. Many of the users of the testing and certification services would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Over ninety-five percent of the samples tested in this program represent seed and grain scheduled for export. Grain is examined for the presence of specified weed and crop seeds upon request of the USDA's Grain Inspection, Packers and Stockyards Administration. A Federal Seed Analysis Certificate, containing purity, germination, noxious-weed seed examination, and other test results is issued upon completion of the testing. The Federal Seed Analysis Certificate is required documentation for shipments of seed and grain from the United States entering certain countries.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Without a fee increase, FY 2002 revenues for seed testing and certification services are projected at $137,000, costs are projected at $172,000, and the trust fund balance is projected to be $47,000 or 3.28 months of operating reserve. With a fee increase, FY 2002 revenues are projected at $160,000, costs are projected at $174,000, and the trust fund balance is projected to be $68,000 or 4.69 months of operating reserve.

This action will raise the hourly rate charged to users of the seed testing and certification services. This fee increase is necessary to offset increased program operating costs resulting from: (1) Salary increases for all Federal employees in 2001 and 2002, (2) increases in rent, (3) increases in costs of supplies needed for testing samples, and (4) purchases of replacement equipment needed to provide the service.

The AMS estimates that this rule will yield an additional $22,000 during FY 2002. The hourly rate for seed testing and certification services will increase by approximately 17 percent. The costs to entities will be proportional to their use of the service, so that costs are shared equitably by all users. The increase in costs to individual firms will be, on average, approximately $13.00 per Federal Seed Analysis Certificate issued. There will also be an increase of $1.90 for each duplicate certificate issued. In addition, this action will establish a fee of $13.00 to recover the cost of issuing preliminary test reports.

C. Civil Justice Reform

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

D. Paperwork Reduction Act

The information collection requirements that appear in part 75 of the regulations have been previously approved by OMB and assigned OMB Control Number 0581–0140 under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Background and Changes

The USDA is authorized by the AMA of 1946, as amended, 7 U.S.C. 1621 *et seq.*, to provide voluntary Federal seed testing and certification services to facilitate the orderly marketing of seed and grain and to enable consumers to obtain the quality of seed and grain they desire. The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the costs of services rendered.

The AMS regularly reviews programs to determine if fees are adequate and if costs are reasonable. This action will increase the hourly fee rate and charges for voluntary seed testing and certification services provided to the seed and grain industries to reflect the costs currently associated with providing the services.

A recent review of the current hourly fee rate, effective March 1, 2001,

revealed that anticipated revenue will not cover increased program costs. Without a fee increase, FY 2002 revenues for seed testing and certification services are projected at $137,000, costs are projected at $172,000, and the trust fund balance is projected to be $47,000 or 3.28 months of operating reserve. With a fee increase, FY 2002 revenues are projected at $160,000, costs are projected at $174,000, and the trust fund balance is projected to be $68,000 or 4.69 months of operating reserve.

The hourly fee for service is established by distributing the projected annual program operating costs over the estimated revenue hours of service provided to users of the service. Revenue hours include the time spent conducting tests, keeping sample logs, preparing Federal Seed Analysis Certificates and storing samples. As program operating costs continue to rise, the hourly fees must be adjusted to enable the program to remain financially self-supporting as required by law. Program operating costs include the salaries and fringe benefits of seed analysts, supervision, training, and all administrative costs of operating the program.

Employee salaries and benefits account for approximately 75 percent of the total budget. A general and locality salary increase of 3.81 percent for 2001 and 4.77 percent for 2002 for Federal employees involved in the seed testing and certification service became effective in January 2002 and will affect program costs.

This fee increase is necessary to offset increased program operating costs resulting from: (1) Salary increases for all Federal employees for 2002, (2) increases in rent, (3) increases in costs of supplies needed for testing samples, and (4) purchases of replacement equipment needed to provide the service.

In view of these increases in costs, the Agency is increasing the hourly rate charged to applicants for the service, including the issuance of Federal Seed Analysis Certificates from $44.40 to $52.00. The fee for issuing additional duplicate certificates is increasing from $11.10 to $13.00 and a fee of $13.00 is established for issuing preliminary reports.

This action will recover the costs associated with providing the voluntary testing service to the seed and grain industry. Although the user-fee increase will increase costs to individual firms, the cost for providing the seed testing and certification services will increase by an average of only $13.00 per Federal Seed Analysis Certificate and $1.90 for each duplicate certificate. It is estimated that the total revenue generated will increase by approximately $22,000 annually.

Summary of Public Comment

A notice of proposed rulemaking was published in the **Federal Register** (66 FR 53550) on October 23, 2001. No comments were received.

List of Subjects in 7 CFR Part 75

Administrative practice and procedure, Agricultural commodities, Reporting and recordkeeping requirements, Seeds, Vegetables.

For the reasons set forth in the preamble, 7 CFR part 75 is amended as follows:

PART 75—REGULATIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS

1. The authority citation for part 75 continues to read as follows:

Authority: 7 U.S.C. 1622 and 1624.

§ 75.41 [Amended]

2. In § 75.41, ''$44.40'' is removed and ''$52.00'' is added in its place.

3. In § 75.43, a new paragraph (c) is added to read as follows:

§ 75.43 Laboratory testing

* * * * *

(c) The charge for a preliminary report issued prior to completion of testing shall be $13.00 and billed in accordance with paragraph (a) of this section.

§ 75.47 [Amended]

4. In § 75.47, ''$11.10'' is removed and ''$13.00'' is added in its place.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6142 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 81

[Docket No. FV01–81–01 FR]

RIN 0581–AC03

Regulations Governing the California Prune/Plum (Tree Removal) Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures for a California Prune/Plum Diversion Program. The program is voluntary and consists wholly of tree removal. The program is being implemented under clause (3) of Section 32 of the Act of August 24, 1935, as amended. The program will help the California dried plum industry address its severe oversupply problems. The tree removal is expected to bring supplies into closer balance with market needs, and provide some relief to growers faced with excess supplies and acreage, and low prices.

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, D.C. 20250–0237; Telephone: 202–720–2491; Fax: 202–720–8938; or E-mail: *Ronald.Cioffi@usda.gov.*

Small businesses may request information on the diversion program by contacting Jay Guerber at the above address, telephone, fax, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be non-significant for the purposes of Executive Order 12866 by the Office of Management and Budget (OMB).

This final rule is effective January 2, 2002, to reflect the beginning of the application period specified in the proposed rule. Prompt notification of growers concerning their participation in the program and prompt tree removal are needed for the industry to achieve the expected program goals.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State and local governments and the private sector. Under section 202 of the UMRA, the Agricultural Marketing Service (AMS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State and local governments, in the aggregate, or by the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the AMS 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.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State and local governments or the private sector of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions, or which would otherwise impede its full implementation. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the reporting and recordkeeping provisions generated by this final rule were approved by the Office of Management and Budget (OMB). The Agricultural Marketing Service received emergency approval under OMB No. 0581–0201, California Prune/Plum Tree Removal Program—Section 32 (as amended 7 U.S.C. 612c). The emergency approval expires May 31, 2002. A regular submission will be sent to OMB requesting approval for three years.

Two forms are needed for the administration of the tree removal program. Growers wishing to participate in the program submitted an ''Application for Prune Tree Removal Program'' (FV–298). The proposed rule estimated that about 200 growers would submit applications. The application period ended January 31, 2002, and a total of 481 program applications have been submitted. It is estimated that each form took about 30 minutes to complete. Thus, the total burden for filing grower applications has increased from 100 to 240.5 hours. A total of 10 hours has been added to cover the recordkeeping burden on growers. Thus, the total burden hours for the program will be 250.5 hours. After removing their trees, growers will then have to sign a statement (FV–299) stating they wish payment. No additional burden has been estimated for this second form which would require only a signature. Finally, participants will be required to retain records pertaining to the tree removal program for two years after the year of removal.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V published at 48 FR 29115 (June 24, 1983).

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Authority for Tree Removal Program

The program is intended to reestablish prune/plum farmers' purchasing power. Programs to reestablish farmers' purchasing power are authorized by clause (3) of Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) (''Section 32''). This clause of Section 32 authorizes USDA to ''* * * reestablish farmers'' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption.'' Section 32 also authorizes USDA to use Section 32 funds ''* * * at such times, and in such manner, and in such amounts, as USDA finds will effectuate substantial accomplishments of any one or more of the purposes of this section.'' Furthermore, ''Determinations by USDA as to what constitutes * * * normal production for domestic consumption shall be final.''

Need for the Tree Removal Program

Production of prune/plums for marketing as dried plums is concentrated in California. Production of dried plums during the 2000 season increased for the second consecutive year, to nearly 219,000 tons (natural condition).

Changes in growing conditions have substantially altered the production outlook for 2001. Production was originally estimated to be 220,000 tons. However, due to a lighter crop-set in major producing areas, as well as freezing temperatures and hail, production for the 2001 crop year is now expected to range between 140,000 and 155,000 tons. This smaller crop somewhat alleviates the oversupply situation, but does not represent a change in the longer-term oversupply situation.

When the crop was estimated at 220,000 tons in the spring of 2001, the industry discussed the use of volume control authorized under the Federal marketing order. In addition, carryin inventories from the 2000 crop year were reported at 100,829 tons. With this level of inventories and crop, the total available supply would have been 320,829 tons.

With this estimated crop size, establishing a 48 percent reserve (52 percent free tonnage) was discussed. The industry does not have a history of establishing reserve percentages, and reserve percentages were last used in the 1970's. The fact that the marketing order committee even considered use of the reserve provisions indicates the gravity with which the industry views the oversupply problem. The use of marketing order reserve provisions is intended to help industries deal with surplus production and facilitate orderly marketing of their crops.

The Prune Bargaining Association (PBA) represents about 40 percent of the independent growers and negotiates a selling price for its members. With the large anticipated crop for the 2001 season and the large carryin inventory, the PBA had difficulty establishing a price with handlers. Even with the smaller crop of 155,000 tons, the PBA could only negotiate a price of $763 per ton. This compares to $845 for the 2000 season, or a decrease of 9.7 percent. Although the price has been set, not all handlers have signed the agreement. Even this lower price may be too high in the eyes of the non-signing handlers, given current supply conditions.

The smaller crop size for 2001 has provided the industry some relief in reducing total available supplies. However, there are still a large number of nonbearing acres (15,000) that will become productive over the next six years. In addition, there are many acres with older, less productive trees which could be replanted in the near future. A tree removal program will assist growers who are facing difficult replanting decisions by allowing them to receive funds for the removal of trees and, at the same time, prohibit those growers from replanting prune/plums in those orchards. Prune/plum growers also tend to be producers of almonds, walnuts, and cling peaches. Plantings of these crops could increase in future years as growers remove prune/plum acreage.

Bearing acreage expanded to a record 86,000 acres during the 2000 season and the average yield increased 19 percent. Yields are anticipated to increase further as more densely planted acres

become productive over the next several years.

Nonbearing acreage, which is an indicator of future production levels, increased to an all-time high of 26,000 acres in 1998. This represented a 22-percent increase in the productive capacity of the industry. The non-bearing acres are more densely planted than in previous years which results in a higher yield per acre.

The dried plum industry faces a long-run surplus situation. For the 2000 crop year, bearing acres were 86,000 and non-bearing acres were 15,000. Bearing acres could exceed 100,000 in the near future. With yields in excess of 2.0 tons per acre, production could be expected to be above 200,000 tons in many crop years.

Total domestic shipments exceeded 100,000 tons for six seasons in the late 1980's and early 1990's, but have declined from a high of 108,085 processed tons in 1996. Per capita consumption has been steadily declining since 1980. Export shipments have been stagnant. As a result of these domestic and export trends, total shipments have never exceeded 190,000 processed tons.

Until recently, export shipments were a source of growth in the dried plum industry. In 2000, exports represented 47 percent of total shipments. However, the strong dollar and the downturn in the economies in Asia and Europe have significantly slowed export sales.

Due to the significant supply-demand imbalance, the industry anticipates several years in which the expected annual carryin inventories will exceed the industry's desirable carryin level of approximately 40,000 tons. If dried plum markets continue to be over-supplied with product, grower prices and grower relations with packers will deteriorate significantly. Even with the lower production estimate for the 2001 crop year, the carryout inventory is expected to exceed 76,000 tons.

High prices from 1992 through 1995, and a more balanced supply and demand situation, helped to stimulate investments in new acreage. This additional acreage came from a variety of sources, mainly rice and pasture land. Intensifying the anticipated surplus situation is the fact that new acres are more productive than existing acres, which causes output to grow more rapidly in proportion to acreage growth.

It takes dried plum trees 6 years to become fully productive. Many of the costs of producing plum trees are ''sunk,'' making it difficult to reverse decisions once those acres are planted. Because supply is slow to adjust to changing market conditions, the industry anticipates many years of production outpacing demand, resulting in continued distressed grower conditions.

From 1980 through 2000, the total cost per ton of producing dried plums exceeded the growers' season-average prices. Similarly, the total cost per acre exceeded revenue per acre.

However, it is also important to consider variable cost. In recent years, the total revenue per ton and per acre has been greater than the total variable cost per ton and per acre. Prices and revenues greater than variable costs provide some indication of why a dried plum producer continues to harvest and process a crop despite losing money.

Tree Removal Diversion Program

The industry is requesting a voluntary tree removal program estimated to cost $17 million. The industry would like to remove a minimum of 20,000 bearing acres of prune/plum trees. With many of the current bearing acres reaching the age where replanting would be considered, the industry is trying to provide an incentive to growers to remove older trees, while ensuring that those orchards are not replanted with prune/plum trees.

To be eligible for the tree removal program, orchards must have a minimum yield of 1.5 tons of dried prune/plums per net-planted acre. With a minimum threshold yield of 1.5 tons of dried prune/plums per net-planted acre, sufficient land would be enrolled in the tree removal program to reduce annual production by approximately 30,000 tons. A net-planted acre is the actual acreage planted with prune/plum trees.

The industry has estimated that it will take $8 to $9 per tree to induce growers to participate in such a program. It is believed that financial institutions that provide growers operating funds would not allow them to participate if the payment per tree is below this level.

This type of one-time decrease in production would more closely align supply with demand, while assuring an adequate supply. This would allow the industry to concentrate their efforts on rebuilding demand for future years.

The industry has already undertaken a smaller-scale tree removal program. However, to finance this grower-initiated tree pull program, grower assessments for promotion were reduced from $50 per ton to $30 per ton. Less money is available for promotion, but growers felt that this re-direction of funds was necessary to help address the oversupply situation.

The tree removal program would be administered through the Agricultural Marketing Service (AMS) and the Prune Marketing Committee (Committee). The Committee is an administrative agency appointed by AMS to locally administer the terms of Federal Marketing Order No. 993.

Any prune/plum producer wishing to participate in the program filed an application with the Committee. The application period began January 2, and ended January 31, 2002.

Each applicant provided information needed by the Committee to operate the program. This included, for example, the number of trees the applicant wished to remove and their location. The applicant also will have to certify that he/she has not contracted to sell the land or otherwise already arranged to have the trees removed for commercial purposes (*e.g.,* shopping centers, housing developments, resorts, etc.). Applicants should note that under the regulations, they bear responsibility for ensuring that prune/plum trees are not replanted, whether by themselves or by successors to the land, until after June 30, 2004, and that if they fail to prevent such replanting, they must refund any USDA payment, with interest, made in connection with the tree removal program. The Committee will review each application for completeness, and make reasonable efforts to contact growers to obtain any missing information.

In order to be eligible to participate in the program, the orchards or blocks of trees being removed from production would have to have a minimum yield of 1.5 dried tons per net-planted acre during either the 1999 or 2000 crop years. A net-planted acre is the actual acreage planted with prune/plum trees. This means that abandoned orchards will not be eligible for participation. USDA considered establishing the minimum qualifying yield at 2.2 tons per acre, but determined that at that level, too many orchards would be ineligible for the program. A lower yield would not reduce production as much as the industry desires.

USDA has allocated $17 million for this program, including administrative costs. Applications would be approved until the level of available funding was reached. Each participating grower will have to then remove trees from production by June 30, 2002. Growers will be paid $8.50 for each eligible tree removed. This level of payment is deemed necessary for a significant number of growers to participate in the tree-removal program. It would cover most of the costs of removing the trees (bulldozing, cutting, etc.), and preparing the land for other uses. The costs vary depending on the number of acres

removed. Some cost savings may accrue with larger acreage removals.

Estimated costs for removing, piling, chipping, or other disposal methods range from $142–$225 per acre or from $1.29–$2.05 per tree. Costs for removing the roots and other debris are expected to range from $163–$289 per acre or from $1.48–$2.63 per tree. Leveling of the ground is expected to cost $161–$401 per acre or $1.46–$3.65 per tree. Fumigation of the tree holes is expected to cost $550 per acre or $5.00 per tree. This would amount to $9.23–$13.33 for each tree removed. The $8.50 payment under the program is expected to offset most of the grower's costs, but should be sufficient to encourage growers to participate in the program.

Each grower participating in the program will have to agree not to replant prune/plum trees on land cleared under this program through June 30, 2004. Because it takes new acres at least six years to be productive, acreage participating in the tree-removal program would not return to commercial prune/plum production for at least eight years and possibly nine years because plantings occur in January and February. Alternative crops could be planted. Additionally, the current economic conditions in the industry, specifically weak demand, reduced per capita consumption, stagnant domestic shipments and exports, and declining grower prices and revenues, would appear to limit the incentives for replanting acreage to prune/plum trees.

Final Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 1,250 producers of dried plums in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000. An estimated 32 producers, or less than 13 percent of the 1,250 total producers, would be considered large producers with annual incomes over $750,000.

This final rule establishes a tree removal diversion program for California dried prune/plums. Authority for the program is provided in clause (3) of Section 32 of the act of August 24, 1935, as amended.

Participation in the diversion program is strictly voluntary, so individual producers, both small and large, can weigh the benefits and costs for their own operations before deciding whether to participate in the program.

Economic Assessment of the Tree Removal Diversion Program

To assess the impact a tree removal program would have on prices growers receive for their product, impacts on grower prices and inventories with a tree removal program and without a tree removal program were estimated. An econometric model was developed for the purpose of estimating nominal season average grower prices under both scenarios.

A tree removal program will directly reduce the number of bearing acres, but there will not be an impact until the 2002 crop year since harvesting of the 2001 crop is completed.

In 2000, there were still 15,000 non-bearing acres. The industry has indicated that no additional plantings of prune/plum trees for acreage expansion are occurring at this time. Therefore, after the 15,000 non-bearing acres come into production, the productive capacity of the industry is assumed to stay constant.

The tree removal analysis assumes that 20,000 acres are removed through the tree removal program, while 3,000 of the non-bearing acres become productive in 2002. This results in bearing acres being reduced from 86,000 in 2001 to 69,000 in 2002. Bearing acres increase by 3,000 acres in each of the subsequent years until 2007, rising to 72,000 in 2003, 75,000 in 2004, 78,000 in 2005, and 81,000 in 2006 and 2007.

At the time the analysis was performed, production for the 2001 crop year was estimated by the Department's National Agricultural Statistics Service (NASS) at 155,000 natural condition tons. Marketable production is generally 93 percent of total production, yielding an estimated 144,500 marketable tons for 2001. Carryin inventory for the 2001 crop year was computed by the marketing order committee at 100,829 tons as of June 30, 2001. These figures are used to derive an estimated total available supply of 244,979 tons for 2001. This level of supply accounts for the fact that a number of voluntary measures have been taken by the industry to reduce the level of production for the 2001 crop year, including crop abandonment and cutbacks on cultural practices.

Shipments are estimated to grow by 1 percent annually, which results in estimated total shipments of 165,932 tons for 2001. The one percent growth in shipments reflects decreased government surplus purchases and possible retail price effects.

For 2002, total shipments are estimated at 167,591 tons and the carryin inventory is estimated at 79,047 tons. With the tree removal diversion program reducing bearing acres to 69,000 for the 2002 crop year, total available supply is estimated at 257,440 tons. It should be noted that through 2001, carryin inventory does not exactly match the prior year's difference between total available supply and total shipments. This is due to shrinkage and other minor adjustments computed by the Federal marketing order committee. However, for this analysis, the estimated carryin from 2002 to 2007 is estimated to be the exact difference between estimated total supply and estimated shipments from the prior year.

The analysis also assumes that yields will fluctuate up and down, in keeping with the known ''alternate bearing'' tendency of prune/plum trees. Estimated production, computed by multiplying acreage times yield, fluctuates accordingly.

As carryin inventories are reduced, the total available supply moderates for crop years 2003 through 2007, relative to the situation without a tree removal program. This results in season average grower prices ranging from $845 to $1,084 during that same time span. It should be noted that the margin of error for these estimates becomes very large for future crop years.

Even though season-average grower prices per ton rise under the tree removal program, all product produced is not necessarily of marketable quantity. Costs are incurred on all the production, but revenue is received only on product actually marketed. Thus, the economic effect of the tree removal program on a per acre basis is to dramatically reduce losses and bring producer returns closer to a break-even level. With losses still being incurred by producers, there should be only a limited incentive to further expand production as a result of the tree removal program. It will remain for growers to control costs and to expand demand to ensure their longer-term economic stability.

Grower prices are a small component of the finished dried plum product and are not closely associated with movements in retail prices. However, the increases in grower prices estimated for crop years 2003 through 2007 may have an impact on retail prices. The extent of any retail price increases would depend on processor and retailer

margins and the pricing and availability of substitute products, such as raisins or other dried fruits. It should be noted that dried plum prices are estimated to increase with or without a tree removal program, but the magnitude of the grower price increase is greater with the program.

Without a tree removal program, bearing acres are estimated to increase to 89,000 by the 2002 crop year. Production would be in excess of 200,000 tons, resulting in carryout inventories in excess of 100,000 tons in 2002. In addition, under this scenario, 2002 grower prices are estimated at $789 per ton. With high inventories and low grower prices, market forces are assumed to induce growers to remove less productive acres and the number of bearing acres is estimated to decline from 89,000 in 2002 to 84,000 in 2007. Even with the decline in bearing acres, production and inventories remain excessive from 2002 through 2007. However, in 2007, carryout inventories fall to an estimated 6,592 tons.

Under both scenarios, grower prices increase and inventories become more manageable. The difference is that, under a tree removal program, adjustments to inventories and prices occur more rapidly. This would accelerate benefits to growers, who would otherwise be struggling to break even in a depressed market, until market forces brought about a slow correction.

In addition to the direct impact on growers' prices and revenues that a tree removal program would have, there are also indirect impacts. A tree removal program will assist in decreasing burdensome (undesirable) carryout inventories. Without a tree removal program, large quantities of dried plums held in packers' inventories prevent grower pools from being closed, which delays grower payments. Large amounts of undesirable inventory lead to strained grower-packer relations. In an attempt to sell the excessive inventories, packers reduce f.o.b. prices, which in turn leads to market share battles and lower prices being passed back to producers. A more balanced supply and demand situation allows growers and packers to jointly continue developing markets in ways that benefit the entire industry.

Industry Self-Help Initiatives

The California dried plum industry has undertaken an initiative to reduce acreage and production. The industry implemented a pre-harvest tree removal program during the 2001 crop year. The industry collected about $3 million to support this effort by reducing assessments under their California State marketing order from $50 to $30 a ton. The $20 per ton reduced assessment was used to support the industry tree removal program.

The program was successful in removing about 2,500 acres. The effects of this industry self-help diversion are included in the analysis of the Federal program.

The industry also has taken measures to stimulate demand, including: (1) The development of new products and new uses for dried plums; (2) marketing efforts to attract younger customers; and (3) domestic and export market promotion programs under the California State marketing order and the Foreign Agricultural Service's Marketing Assistance Program (MAP). One of the most recent initiatives involved securing approval from the Food and Drug Administration to change the name ''dried prunes'' to ''dried plums.'' This has allowed the industry to redirect its generic marketing efforts to attract a new generation of consumers.

Benefits of the Program

The economic assessment of the tree removal program indicates that it is expected to benefit producers, particularly small, under-capitalized producers, as well as the entire dried plum industry, including packers. The per ton sales price is projected to increase from 2002–2007, reducing losses and moving producer returns closer to break-even levels. The benefit to producers from reduced losses is projected to total approximately $93 million over the six-year period 2002–2007. The benefits over the six-year period would average nearly $15.5 million annually. The proposed rule incorrectly indicated that the benefit to producers from reduced losses would be about $128 million and that the benefits over the six-year period would average nearly $24 million annually.

Costs of the Program

The major cost of the program would be the payment to producers for removing their prune/plum trees. A total of $17 million, less Committee administrative costs, is available for the tree removal program. Committee administrative costs for reviewing applications and verifying tree removals are expected to be about $125,000. Major expense categories for administration include costs for salaries and benefits; vehicle rental and maintenance; insurance and overhead; and supplies.

Total producer costs associated with filing applications to participate in the program and maintaining records for the period specified after tree removal are expected to be about $2,500. These costs were estimated to be $1,000 in the proposed rule. The increased producer cost estimate is due to the increased number of applications and the addition of 10 hours to cover grower recordkeeping. The number of applications received was estimated to be 200 in the proposed rule and the actual number received was 481.

Overall Assessment

Payments made through this program could help prune/plum producers by addressing the oversupply problem that is adversely affecting the dried plum industry. A tree removal program is expected to allow supply to be adjusted downward more quickly. Market forces will also result in supplies being reduced, but this adjustment may occur more slowly, likely resulting in a number of farm failures. The tree-removal program may be beneficial in reducing the risk of loan default for lenders that financed prune/plum growers. This program will likely help small, under-capitalized producers to stay in business. These producers are often efficient, but do not have adequate resources to continue to operate given the current depressed conditions within their industry.

Reducing the level of unprofitability also should provide opportunities for the industry to engage in additional demand-enhancing activities, especially directed at the domestic market. Even a moderate increase in domestic per capita consumption will have a significant, positive impact on grower returns.

Costs for the program would include the $17 million to be paid growers and to the Committee for administration costs under the Federal tree removal diversion program. Additionally, growers would incur costs totaling about $2,500 to comply with the filing and record-keeping requirements of the program.

Benefits to growers under the tree removal program could total approximately $93 million. The first step in this calculation is to multiply marketable production for each of the six years (2002–2007) times the difference between grower price and variable cost, and to sum those figures. This is done for each of the two scenarios (with and without a tree pull program). The $93 million difference between those figures represents a conservative (low-end) estimate of program benefits resulting from reduced grower losses. This cost calculation assumes that the acreage on which trees are removed remains idle, and that

growers must therefore absorb all fixed costs on that acreage. To the extent that the land is put to other productive uses, growers would not be absorbing all fixed costs of producing prune/plums, and grower benefits would be higher.

If growers are earning more, it follows that processors and/or retailers beyond the farmgate would pay higher raw product costs to obtain the prune/plums from the growers. These higher costs could be passed on to consumers through higher retail prices or could be absorbed as reduced operating margins for other affected sectors of the economy—processors, wholesalers, or retailers. An estimate of these costs is obtained by multiplying the estimated grower price changes over each of the six years (2002–2007) times annual shipments (an average of the prune/plum shipments with the tree pull program and without the tree pull program). That figure, summed over the six years, is approximately $68 million. However, this $68 million cost is likely overstated due to the fact that grower prices are currently less than the cost of production. Adjustments in retail prices, and retailer and processor margins, are anticipated to change with or without a tree removal program.

Another cost of the tree removal program is the reduced economic activity due to the growers purchasing fewer inputs (labor, chemicals, etc.) from the reduction in prune/plum acres managed and harvested. Input producers (laborers and agricultural chemical firms) would see less revenue because of lowered purchases of these inputs. To the extent that acreage removed is replanted in other crops, those costs could be somewhat offset by purchases of inputs to produce the alternative crops. This cost of the tree removal program is difficult to quantify and is not included in this analysis.

Savings over the same period of up to $60 million could be realized through reduced surplus removal purchases of dried plum products for Federal feeding programs. These government savings would be used to purchase other commodities for use in school and other food assistance programs.

Historically, the dried plum industry has not relied heavily on the Federal surplus removal program. Since the 1991 season, the industry has requested and received surplus removal purchases in only 4 of the past 11 seasons. Should supplies be reduced as expected through the tree removal program, it would be unlikely that the dried plum industry would seek government assistance in the form of surplus removal purchases for several years to come.

Conclusion

Based on this information, USDA has determined that there is a surplus of dried plums, and that reestablishment of producers' purchasing power would be encouraged by using Section 32 funds to reduce supplies under a Diversion Program for Dried Plums/Prunes consisting wholly of a tree-removal program. USDA has further determined that this program is expected to be a long-term solution to the oversupply situation that exists in the California dried plum industry, and that it will provide relief to growers.

Notice of this action was published in the **Federal Register** on December 17, 2001. Interested persons were invited to submit comments until January 16, 2002. Eleven comments were received. Most of them supported the tree removal program and expressed appreciation to USDA for proposing to put the program in place. Other commenters requested changes or clarifications to the eligibility, removal, and replanting requirements, and several suggested alternatives to tree removal. One commenter did not support the proposed program.

One commenter suggested that USDA should buy the surplus production and distribute the dried plums to needy persons in the United States and outside the United States. Another suggested that USDA should arrange to have the trees removed and shipped to other countries so they could be replanted and possibly provide food for needy people. USDA generally purchases commodities requested by users in quantities which can be distributed quickly. Available storage space is limited and storage is quite expensive. The tree removal program, on the other hand, is designed to help the California dried plum industry by bringing supplies more closely in line with market needs, and by providing more lasting benefits. Consumers should benefit through a stabilized market and reduced fluctuation in supplies and prices. The idea of shipping trees as a gift to needy countries with compatible climates and growing conditions has merit. However, the cost of removal, packaging of the trees with their roots intact, and the shipment to various countries would be prohibitive and the survival rate of the trees would probably be quite low.

Six comments were received from individuals requesting changes or clarifications to the eligibility, replanting, and tree removal requirements of the program.

Comments from two representatives of the California raisin industry requested USDA to incorporate a provision into the tree removal program specifying that each grower participating in the tree removal program must agree not to replant raisin grape vines on land cleared under the tree removal program through June 30, 2004, to prevent harming the raisin industry. A prune/plum grower from the Santa Clara Valley suggested that the yield requirements be reduced from 1.5 to 1.2 tons per acre to recognize that yields in the Santa Clara Valley are traditionally lower than the yields in the Central Valley of California, where most of the prune/plums are grown.

Adding prohibitions on what could or could not be planted on land cleared under this program goes beyond the intended scope of the program and does not appear justified at this time. The limits placed on producers with respect to the trees involved in this program reflect that at a minimum prune/plum producers should not be allowed to accept the payment and, in the near future, recommit the same ground to prune/plum trees.

The program will assure that removal is not part of the normal process of tree replacement. The program directly affects land identified by the producer as prime prune/plum production land. Market conditions, moreover, would govern what producers will or will not plant. Producers are not likely to plant a crop which can be expected to be in surplus. In the end, USDA's desire was to have this program be as simple as possible.

With respect to changes in the yield per acre limit, the suggestion was not adopted because USDA desires program dollars to be used for removing higher yielding trees. The program is designed to benefit the industry by stabilizing supplies and prices of dried plums.

Two comments were received from the Executive Director of the Prune Marketing Committee. The commenter requested that an exception be made to the eligibility requirements specifying that the trees removed must have yielded at least 1.5 tons per net-planted acre during the 1999 or 2000 crop years. The commenter reported that some producers might not have the required production information because the producers did not harvest, or only harvested a portion of, their crops during the 1999 or 2000 crop years. The commenter indicated that these producers' crops generated little or no revenue because their handlers either pro-rated the quantity of dried plums they purchased or made no purchases of dried plums during 1999 or 2000.

The commenter further indicated that these producers should not be further

disadvantaged by declaring them ineligible to participate because they were not able to sell any of their fruit or only some of their fruit during the 1999 or 2000 crop years. The commenter requested that these producers be allowed to qualify if they sold production during the 2001 or 1998 crop years.

This comment was not adopted because expanding the eligibility base period could result in some growers gaining an advantage over other growers. While some producers could fare better than other producers under a broader base period, the point of the program is to achieve an overall reduction in the level of the commodity available for market. The simplest and most assured manner for achieving this goal is to limit producer eligibility to production from the 1999 or 2000 crop years as was proposed. Moreover, limiting eligibility to these two crop years will provide some measure of assurance of uniform treatment among producers and should help the public's understanding of the program.

This commenter also questioned a statement in the supplementary information section of the proposed rule that appeared on page 64920, first column, last paragraph of the December 17, 2001, issue of the **Federal Register**. The statement specified that the applicant would have to certify that he/she has not contracted to sell the land or otherwise already arranged to have the trees removed. The commenter indicated that the language implies that a grower cannot sell a prune orchard to another grower who agrees not to replant trees until after June 30, 2004, and could also exclude a grower who is in the process of buying a prune orchard.

It was not the intent of USDA to prevent participants from selling their orchards should they so choose after enrollment in the program. However, the owner who accepts the payment, or is the party of record for program purposes, will still be liable for ensuring that the two-year planting prohibition is followed even though the participant no longer owns the land. The non-planting promise is a guarantee by the participant that no one (not just the participant) will plant the property with prune/plum trees during the two-year non-planting period. Further, it was and remained the intent of USDA that only those persons who are the current owners of the property, and have not already contracted to sell the property or destroy the trees could participate. This is to avoid conflict where title to the property is already in transition—and where the new buyer may be expecting the trees to stay.

The certification that producer applicants are required to sign, guarantees that they have not made prior arrangements to sell the land or remove the trees for commercial purposes. That is, they guarantee that the land is not going to be commercially developed for shopping centers, housing developments, vacation resorts, or similar such purposes. It was determined that including such non-agricultural land in the program would not serve the purposes of the program.

The Chairman of the Prune Marketing Committee suggested that the application period be extended for an additional 15 to 30 days to give producers more time to apply. The commenter indicated that this would be extremely helpful to the industry in obtaining as many participants as possible. This commenter subsequently withdrew the request. An extension of the application period was considered but was found not to be necessary in light of producer program interest and the fact that no material changes were found appropriate or needed based on the comments received. Had a need for material change in the program been found warranted and appropriate based on the comments received, an extension or other action would have be taken to allow for the adjustment. Deadlines were set out clearly in the proposed rule and the program was widely publicized in the industry.

Another commenter raised questions regarding the definition of the term ''removal'' in § 81.3. In the proposed rule, the term was defined to mean that the prune/plum trees are no longer standing and capable of producing a crop. The provision states that the producer can accomplish removal by any means the producer desires. The commenter contends that grafting other fruit stock to a prune/plum tree should be considered removal under the proposed definition. The commenter states that the prune/plum trees would no longer be standing, nor will they be able to produce a crop of prune/plums. In fact, no part of the prune/plum tree would be left.

This procedure would advance the likelihood of the production of other crops, and it is preferred that the program be neutral in that respect. Also, this would add unneeded complication to the program. Given that producer interest in the program is very high without this allowance, there does not appear to be any need to increase the attractiveness of the program. Moreover, the intent of the program is to remove prune/plum trees and the roots of those trees. Grafting is not consistent with the intent of the program. Therefore, the definition of removal has been clarified to exclude grafting as a method of removal and to specify that ''removal'' means that the prune/plum trees are no longer standing and capable of producing a crop, and that the roots of trees have been removed.

A final commenter indicated that he was opposed to the program. He stated that the industry got itself into the oversupply situation and should not look to the government to get itself out of it. This program is a valid exercise of the authority granted USDA under section 32. USDA is monitoring this program very closely to ensure that program objectives are attained. The majority of the industry supports this program having considered a number of less effective alternatives to balance supplies and demand.

All of the comments received have been thoroughly reviewed. Some adjustments have been made in the rule for clarity and to assure accomplishment of the goals of the program as set out in the proposed rule and as set out in this final rule.

After consideration of all relevant matter presented, including the comments received, and other information, it is found that this final rule, as hereinafter set forth, will tend to effectuate the policy of 7 U.S.C. 612c.

Pursuant to 5 U.S.C. 553, it is also found that no good cause existed for delaying the effective date of this rule. Such delay would be contrary to the public interest because prune/plum producers needed to know immediately whether they would be accepted into the program by February 14, 2002. Eligible producers wanted to begin removing the prune/plum trees. In addition, further delay could have jeopardized the ability of the program to accomplish its goal of reducing the supply of dried plums. As a technical matter, the rule has been made retroactive to January 2, 2002, for the reasons given. In fact, however, no obligations were undertaken until February 14, 2002. If for any reason January 2, 2002, is considered inappropriate as an effective date, then the effective date will be considered February 14, 2002, which was well after the close of the comment period. Program issues were open until that date.

List of Subjects in 7 CFR Part 81

Administrative practice and procedures, Agriculture, Prunes, Reporting and record keeping requirements, Surplus agricultural commodities.

For the reasons set forth in the preamble, Title 7, Subtitle B, Chapter I is amended as follows:

1. In Subtitle B, Chapter I, part 81 is added to read as follows:

PART 81—PRUNE/DRIED PLUM DIVERSION PROGRAM

Sec.
81.1 Applicability.
81.2 Administration.
81.3 Definitions.
81.4 Length of program.
81.5 General requirements.
81.6 Rate of payment; total payments.
81.7 Eligibility for payment.
81.8 Application and approval for participation.
81.9 Inspection and certification of diversion.
81.10 Claim for payment.
81.11 Compliance with program provisions.
81.12 Inspection of premises.
81.13 Records and accounts.
81.14 Offset, assignment, and prompt payment.
81.15 Appeals.
81.16 Refunds; joint and several liability.
81.17 Death, incompetency or disappearance.

Authority: 7 U.S.C. 612c.

§ 81.1 Applicability.

Pursuant to the authority conferred by Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) (Section 32), the Secretary of Agriculture will make payment to California producers who divert prune/plums by removing trees on which the fruit is produced in accordance with the terms and conditions set forth herein.

§ 81.2 Administration.

The program will be administered under the direction and supervision of the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), and will be implemented by the Prune Marketing Committee (Committee). The Committee, or its authorized representatives, does not have authority to modify or waive any of the provisions of this subpart. Such power shall rest solely with the Administrator of AMS, or delegatee. The Administator or delegatee, in the Administrator's or delegatee's sole discretion can modify deadlines or other conditions, as needed or appropriate to serve the goals of the program. In all cases, payments under this part are subject to the availability of funds.

§ 81.3 Definitions.

(a) *Administrator* means the Administrator of AMS.

(b) *AMS* means the Agricultural Marketing Service of the U.S. Department of Agriculture.

(c) *Application* means ''Application for Prune Tree Removal Program.''

(d) *Committee* means the Prune Marketing Committee established by the Secretary of Agriculture to locally administer Federal Marketing Order No. 993 (7 CFR Part 993), regulating the handling of dried prunes produced in California.

(e) *Diversion* means the removal of prune-plum trees after approval of applications by the Committee through June 30, 2002.

(f) *Producer* means an individual, partnership, association, or corporation in the State of California who grows prune/plums that are dehydrated into dried plums for market.

(g) *Removal* means that the prune-plum trees are no longer standing and capable of producing a crop, and the roots of the trees have been removed. The producer can accomplish removal by any means the producer desires. Grafting another type of tree to the rootstock remaining after removing the prune/plum tree would not qualify as removal under this program.

§ 81.4 Length of program.

Producers diverting prune/plums by removing prune-plum trees must complete the diversion no later than June 30, 2002.

§ 81.5 General requirements.

(a) To be eligible for this program, the trees to be removed must have yielded at least 1.5 tons of dried prune/plums per net-planted acre during the 1999 or 2000 crop year. A net-planted acre is the actual acreage planted with prune-plum trees. Abandoned orchards and dead trees will not qualify. In new orchards diverted, qualifying trees must be at least 5 years of age (6th leaf), contain at least two scaffolds, and be capable of producing at least 1.5 tons per net-planted acre. The block of trees for removal must be easily definable by separations from other blocks and contain at least 1,000 eligible trees or comprise an entire orchard.

(b) Any grower participating in this program must agree not to replant prune-plum trees on the land cleared under this program through June 30, 2004. Participants bear responsibility for ensuring that trees are not replanted, whether by themselves, or by successors to the land, or by others, until after June 30, 2004. If trees are replanted before June 30, 2004, by any persons, participants must refund any USDA payment, with interest, made in connection with this tree removal program.

§ 81.6 Rate of payment; total payments.

(a) The rate of payment for each eligible prune-plum tree removed will be $8.50 per tree.

(b) Payment under paragraph (a) of this section will be made after tree removal has been verified by the staff of the Committee.

(c) The $8.50 per tree payment shall be the total payment. USDA will make no other payment with respect to such removals. The producer will be responsible for arranging, requesting, and paying for the tree removal in the specified orchard blocks or orchard(s), as the case may be.

(d) Total payments under this program are limited to no more than $17,000,000. No additional expenditures shall be made, unless the Administrator or delegatee in their sole and exclusive discretion shall, in writing, declare otherwise.

§ 81.7 Eligibility for payment.

(a) If total applications for payment do not exceed $17,000,000, less administration costs, payments will be made under this program to any eligible producer of prune/plums who complies with the requirements in § 81.8 and all other terms and conditions in this part.

(b) If applications for participation in the program authorized by this part exceed $17,000,000, less administration costs, the Committee will approve the applications (subject to the requirements in § 81.8) in the order in which the completed applications are received in the Committee office up to the funding limit of $17,000,000, less administration costs, for the program. Any additional applications will be denied.

(c) The Administrator or his delegatee may set other conditions for payment, in addition to those provided for in this part, to the extent necessary to accomplish the goals of the program.

§ 81.8 Application and approval for participation.

(a) Applications will be reviewed for program compliance and approved or disapproved by Committee office personnel.

(b) Applications for participation in the Prune-Plum Diversion Program can be obtained from the Committee office at 3841 North Freeway Boulevard, Suite 120, Sacramento, California 95834; telephone (916) 565–6235.

(c) Any producer desiring to participate in the prune-plum diversion program must have filed an application with the Committee by January 31,

2002. The application shall be accompanied by a copy of any two of the following four documents: Plat Map from the County Hall of Records; Irrigation Tax Bill; County Property Tax Bill; or any other documents containing an Assessor's Parcel Number. Such application shall include at least the following information:

(1) The name, address, telephone number and tax identification number/social security number of the producer;

(2) The location and size of the production unit to be diverted;

(3) The prune/plum production from the orchard or portion of the orchard to be diverted during the 1999–2000 and 2000–2001 seasons;

(4) A statement that all persons with an equity interest in the prune/plums in the production unit to be diverted consent to the filing of the application. That is, the statement must show that the applicant has clear title to the property in question, and/or as needed, the statement must show an agreement to participate in the tree removal program from all lien or mortgage holders, and/or land owners, lessors, or similar parties with an interest in the property to the extent demanded by AMS or to the extent that such persons could object to the tree removal. However, obtaining such assent shall be the responsibility of the applicant who shall alone bear any responsibilities which may extend to third parties;

(5) A statement that the applicant agrees to comply with all of the regulations established for the prune/plum diversion program;

(6) A certification that the information contained in the application is true and correct;

(7) The year that the unit of prune/plums was planted;

(8) An identification of the handler(s) who received the prune/plums from the producer in the last two years.

(d) After the Committee receives the producer applications, it shall review them to determine whether all the required information has been provided and that the information appears reliable.

(e) As previously indicated, if the number of trees to be removed in such applications, multiplied by $8.50 per tree, exceeds the amount of funds available for the diversion program, each grower's application will be considered in the order in which they are received at the Committee office. AMS may reject any application for any reason, and its decisions are final.

(f) After the application reviews and confirmation of eligible trees are completed, the Committee shall notify the applicant, in writing, as to whether or not the application has been approved and the number of trees approved for payment after removal. If an application is not approved, the notification shall specify the reason(s) for disapproval. AMS shall be the final arbiter of which applications may be approved or rejected, and the final arbiter of any appeal.

§ 81.9 Inspection and certification of diversion.

When the removal of the prune-plum trees is complete, the producer(s) will notify the Committee on a form provided by the Committee. The Committee will certify that the trees approved for removal from the block or orchard, as the case may be, have been removed, and notify AMS.

§ 81.10 Claim for payment.

(a) To obtain payment for the trees removed, the producer must submit to the Committee by June 30, 2002, a completed form provided by the Committee. Such form shall include the Committee's certification that the qualifying trees from the blocks or orchards have been removed. If all other conditions for payment are met, AMS will then issue a check to the producer in the amount of $8.50 per eligible tree removed.

§ 81.11 Compliance with program provisions.

If USDA on its own, or on the advice of the Committee, determines that any provision of this part have not been complied with by the producer, the producer will not be entitled to diversion payments in connection with tree removal. If a producer does not comply with the terms of this part, including the requirement specified in § 81.5(b), the producer must refund, with interest, any USDA payment made in connection with such tree removal, and will also be liable to USDA for any other damages incurred as a result of such failure. The Committee or USDA may deny any producer the right to participate in this program or the right to receive or retain payments in connection with any diversion previously made under this program, or both, if the Committee or USDA determines that:

(a) The producer has failed to properly remove the prune/plum trees from the applicable block or the whole orchard regardless of whether such failure was caused directly by the producer or by any other person or persons;

(b) The producer has not acted in good faith in connection with any activity under this program; or

(c) The producer has failed to discharge fully any obligation assumed by, or charged to, him or her under this program.

§ 81.12 Inspection of premises.

The producer must permit authorized representatives of USDA or the Committee, at any reasonable time, to have access to their premises to inspect and examine the orchard block where trees were removed and records pertaining to the orchard to determine compliance with the provisions of this part.

§ 81.13 Records and accounts.

(a) The producers participating in this program must keep accurate records and accounts showing the details relative to the prune/plum tree removal, including the contract entered into with the firm or person removing the trees, as well as the invoices.

(b) The producers must permit authorized representatives of USDA, the Committee, and the General Accounting Office, or their delegatees, at any reasonable time to inspect, examine, and make copies of such records and accounts to determine compliance with provisions of this part. Such records and accounts must be retained for two years after the date of payment to the producer under the program, or for two years after the date of any audit of records by USDA, whichever is later. Any destruction of records by the producer at any time will be at the risk of the producer when there is reason to know, believe, or suspect that matters may be or could be in dispute or remain in dispute.

§ 81.14 Offset, assignment, and prompt payment.

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop proceeds thereof in favor of the producer or any other creditors except agencies of the U.S. Government.

(b) Payments which are earned by a producer under this program may be assigned in the same manner as allowed under the provisions of 7 CFR part 1404.

(c) Prompt payment interest from AMS will not be applicable.

§ 81.15 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination. The Deputy Administrator of Fruit and Vegetable Programs shall establish the procedure for such appeals.

§ 81.16 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application of this part, and if any refund of a payment to AMS shall otherwise become due in connection with the application of this part, all payments made under this part to any producer shall be refunded to AMS together with interest.

(b) All producers signing an application for payment as having an interest in such payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application of this part.

(c) Interest shall be applicable to refunds required of any producer under this part if AMS determines that payments or other assistance were provided to a producer who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the Commodity Credit Corporation (CCC) for funds, as of the date AMS made benefits available. Such interest shall accrue from the date of repayment or the date interest increases as determined in accordance with applicable regulations. AMS may waive the accrual of interest if AMS was at fault for the overpayment.

(d) Interest allowable in favor of AMS in accordance with paragraph (c) of this section may be waived when there was no intentional noncompliance on the part of the producer, as determined by AMS. Such decision to waive or not waive the interest shall be at the discretion of the Administrator or delegatee.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed for those claims which are addressed in 7 CFR part 792.

(f) Producers must refund to AMS any excess payments, as determined by AMS, with respect to such application.

(g) In the event that a benefit under this part was provided as the result of erroneous information provided by the producer, or was erroneously or improperly paid for any other reason, the benefit must be repaid with any applicable interest.

§ 81.17 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of a prune/plum producer that is eligible to receive benefits in accordance with this part, such person or persons who would, under 7 CFR part 707 be eligible for payments and benefits covered by that part, may receive the tree-removal benefits otherwise due the actual producer.

Dated: March 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6098 Filed 3–11–02; 3:09 pm]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV01–916–3 FIR]

Nectarines and Peaches Grown in California; Revision of Reporting Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule revising the reporting requirements under the marketing orders for California nectarines and peaches by modifying the requirement that all handlers submit a monthly destination report. This rule continues in effect the relaxation of the requirement by establishing an exemption for handlers who ship fewer than 50,000 containers or container equivalents of tree fruit, including nectarines, peaches, and plums. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative (NAC) and Peach Commodity Committees (PCC) (committees). The handling of plums grown in California is regulated by a California State marketing order.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20090–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20090–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the modification of the reporting requirements under the orders' rules and regulations by establishing an exemption from filing mandatory monthly destination reports for handlers who handle less than 50,000 containers or container equivalents of nectarines, peaches, and plums. While nectarines and peaches are regulated under the Federal marketing orders, plums are regulated under a California state marketing order. Most handlers,

however, handle and report on a combination of these fruit.

Under this modification, handlers who shipped less than 50,000 containers or container equivalents of any combination of nectarines, peaches, and plums in the 2000 season will be exempted from filing monthly destination reports in subsequent seasons, provided their shipments continue to total less than 50,000 containers or container equivalents of these fruit in the previous season.

Handlers who begin operation during or after the 2001 season will also be exempt from filing monthly destination reports during their first year of operation. These handlers will continue to be exempt from such reporting requirements as long as their shipments of these tree fruit total less than 50,000 containers or container equivalents, in the previous season.

Handlers who are not exempt, but in some subsequent year ship less than 50,000 containers or container equivalents, will be exempt the following season and will be exempt in subsequent seasons, provided their shipments continue to total less than 50,000.

Under the orders, reporting requirements are established in §§ 916.60 and 917.50 for fresh shipments of California nectarines and peaches, respectively. Prior to publication of the interim final rule, such reports were to be filed with the committees by all handlers. The information required includes: (1) The name of the shipper and the shipping point; (2) the car or truck license number (or name of the trucker), and identification of the carrier; (3) the date and time of departure; (4) the number and type of containers in the shipment; (5) the quantities shipped, showing separately the variety, grade, and size of the fruit; (6) the destination; and (7) the identification of the inspection certificate or waiver pursuant to which the fruit was handled. Other information may be requested by the committees, with the approval of the Secretary, to enable the committees to carry out their duties.

Sections 916.160 and 917.178 of the orders' rules and regulations specify the reporting procedures for handlers of nectarines and peaches, which include the requirements related to destination reports.

Information from destination reports is utilized by the NAC and PCC to determine the quantities of nectarines and peaches shipped to various markets. Such information permits the committees to target marketing research and promotion efforts more effectively, giving the committees the flexibility to direct their limited marketing funds to open new markets or expand existing markets.

The more accurate the information obtained from handlers, the more precisely the committees can address their marketing research and promotion efforts. However, this information collection comes at a cost to the committees and to handlers, especially smaller handlers who generally lack the staff to prepare such reports.

The NAC and PCC, which are responsible for local administration of the orders, met on May 3, 2001, and unanimously recommended that these reporting requirements be revised, beginning with the 2001 season, which began April 1. However, because the season had already begun, the relaxation in report requirements was implemented as of the effective date of the interim final rule.

At three subcommittee meetings prior to the May 3, 2001 committee meetings, discussions on the merits of the exemption were held. The Management Services Committee met on January 18, 2001, and discussed a request from a small handler to review the destination report requirements. It was reported that destination information from small handlers is not always accurate since the reporting handlers do not necessarily know the final destination of their fruit sold at terminal markets. It was also noted that the burden of filing destination reports is often a complaint of small handlers.

The Management Services Committee then directed the committee staff to review the destination report requirements and procedures, and make recommendations based upon their review at the following Management Services Committee meeting.

The Management Services Committee met again on March 6, 2001, and discussed the destination report information provided by the committee staff. The members also discussed changes to the destination report requirements, as well as the effect of the revision on handlers in the industry and on information gathering conducted by the committees.

A review of destination report records by the staff revealed that approximately 160 handlers shipped less than 50,000 containers of all three tree fruit during the 2000 season. As a percentage of total shipments, these handlers represent approximately 3 percent of all shipments of nectarines, peaches, and plums. The committees' staff spends a portion of their time administering the collection of this relatively small amount of additional information. The committees believe that exempting information from handlers who represent approximately 3 percent of all tree fruit shipments would not have a significant effect on overall destination information, and may actually improve the accuracy of destination information. These handlers are small entities, and such a relaxation will reduce the reporting burden on them. In addition, the committees' administrative costs associated with destination reports may be reduced.

Finally, the Management Services Committee met on April 18, 2001, to review destination report summaries from the 2000 season. Based on all the information considered, the members voted unanimously to recommend to the NAC and PCC that handlers who ship less than 50,000 containers or container equivalents of tree fruit (including nectarines, peaches, and plums) should be exempted from filing monthly destination reports.

Final Regulatory Flexibility Analysis

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

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

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration [13 CFR 121.201] as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities. Since the interim final rule was published, the small business producer standards were changed from $500,000 to $750,000.

The committees' staff has estimated that there are less than 20 handlers of nectarines and peaches in the industry

who could be defined as other than small entities. In the 2000 season, the average handler price received was $9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 555,556 containers of nectarines and peaches to have annual receipts of $5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the previous season, the committees' staff estimates that small handlers of nectarines and peaches represent approximately 94 percent of the handlers within the industry.

The committees' staff has also estimated that approximately 20 percent of the nectarine and peach producers in the industry could be defined as other than small entities. In the 2000 season, the average producer price received was $5.50 per container or container equivalent for nectarines, and $5.25 per container or container equivalent for peaches. A producer would have to produce at least 136,364 containers of nectarines and 142,858 containers of peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2000 season, the committees' staff estimates that small producers represent approximately 80 percent of the nectarine and peach producers within the industry.

This rule continues in effect the revision of §§ 916.160 and 917.178 of the orders' administrative rules and regulations to relax the requirement that all handlers file monthly destination reports. Under that revision, handlers who shipped less than 50,000 containers or container equivalents of tree fruit during the 2000 season will be exempted from filing monthly destination reports in subsequent seasons, as long as their shipments total less than 50,000 containers or container equivalents of tree fruit in the previous season.

Handlers who begin operations during or after the 2001 season will also be exempt from filing monthly destination reports during their first season of operation. Such handlers will continue to be exempt in subsequent seasons as long as their shipments total less than 50,000 containers or container equivalents of tree fruit in the previous season.

The NAC and PCC met on May 3, 2001, and unanimously recommended these changes to the reporting requirements for the 2001 season, which began April 1. This action was recommended to the committees by a subcommittee charged with review and discussion of the changes.

The Management Services Committee met on January 18, 2001, to discuss a request from a small handler concerning destination report requirements. At that time, the members reviewed the request and directed the staff to research the destination report requirements and procedures. At the March 6, 2001, meeting, the Management Services Committee reviewed a staff recommendation to relax the destination reporting requirements for small handlers. The members also considered two alternatives to this action at that meeting.

First, the committee considered not establishing any exemption for small handlers. This alternative was rejected because the members felt that small handlers should be provided an exemption from the destination reporting requirements. Second, they considered establishing a filing exemption for handlers who shipped less than 10,000 containers of tree fruit during the 2000 season. The committee estimated that this exemption would affect approximately 100 handlers only and one percent of total shipments. The Management Services Committee rejected that alternative because they believed that more handlers should be exempted from the requirement for filing destination reports. After some discussion, it was determined and recommended by the Management Services Committee that handlers who ship less than 50,000 containers or container equivalents of tree fruit should be exempted from filing monthly destination reports.

At a subsequent Management Services Committee meeting on April 18, 2001, the members reviewed destination report summaries from the 2000 season and voted unanimously to recommend to the NAC and PCC that handlers who ship less than 50,000 containers or container equivalents of tree fruit be exempted from filing monthly destination reports.

The committees make recommendations regarding all the revisions in reporting requirements after considering all available information, including comments of persons at committee and subcommittee meetings, and comments received in writing or verbally by committee staff. Such subcommittees include the Management Services Committee.

At the meetings, the impact of and alternatives to these recommendations are deliberated. These subcommittees, like the committees themselves, frequently consist of individual producers (and handlers, where authorized) with many years' experience in the industry, who are familiar with industry practices. Like all committee meetings, subcommittee meetings are open to the public and comments, both in person and in writing, are widely solicited.

This relaxation is expected to have an impact on small handlers by reducing the time and related costs of filing monthly destination reports. The committees estimate that approximately 160 peach and nectarine handlers would be exempt from filing destination reports. Each handler files an average of four reports each season. The time each handler spends preparing the monthly report has been estimated at 45 minutes. Therefore, in terms of reporting burden time, each qualified respondent handler will save an average of three hours each season as a result of this exemption. In total, this exemption could save the qualified industry respondents approximately 480 hours annually each for peach handlers and nectarine handlers.

This rule is also expected to have an impact on the committees by decreasing hours of staff time currently utilized to collect, reconcile, and assimilate destination report data received from small handlers.

This rule does not impose any additional reporting and recordkeeping requirements on either small or large handlers. In fact, as noted previously, this rule will reduce reporting and recordkeeping requirements on qualified handlers, as well as on the committees themselves. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies, such as effectuated by this rule.

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

In addition, the committees' meetings are widely publicized throughout the nectarine and peach industries and all interested parties are encouraged to attend and participate in committee deliberations on all issues. The committees routinely schedule meetings bi-annually during the last week of November or first week of December, and the last week of April or first week of May. Like all committee meetings, the May 3, 2001, meetings were public meetings, and all entities, large and small, were encouraged to express views on these issues.

In addition, the committees have a number of appointed subcommittees to review certain issues and make

recommendations to the NAC and PCC. For this action, three subcommittee meetings were held prior to the May 3, 2001, meeting at which these regulations were reviewed and discussed.

An interim final rule concerning this action was published in the **Federal Register** on July 31, 2001 (66 FR 39406). Copies of the rule were provided to all committee members and handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended October 1, 2001. No comments were received.

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

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that finalizing the interim final rule, without changes, as published in the **Federal Register** (66 FR 39406, July 31, 2001), will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

PART 916—NECTARINES GROWN IN CALIFORNIA

PART 917—PEACHES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR parts 916 and 917 which was published at 66 FR 39406, July 31, 2001, is adopted as a final rule without change.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6148 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV02–920–1 FIR]

Kiwifruit Grown in California; Relaxation of Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, a corrected interim final rule which relaxed pack requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, continues the elimination of one size designation, and the addition of two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 205–8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 205–8938 or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, continues the elimination of one size designation, and the addition of two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace.

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Section 920.52 authorizes the establishment of pack requirements. Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iii) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume fill, or bulk containers.

The amount of kiwifruit supplied to the domestic market by California handlers has declined 40 percent since the 1992–93 season. In addition, grower prices have steadily declined in spite of

a continuous increase in the U.S. per capita consumption of kiwifruit. When the order was implemented in 1984, the average Free-on-Board (FOB) value was $1.14 per pound. In 1997–1998, the Committee reviewed FOB values and determined that the average FOB value for the 1992–93 season through the 1997–98 season was $0.55 per pound.

The Committee met on July 8, 1998, and decided to address the confusion in the marketplace and the differences in size designations between California kiwifruit and imported kiwifruit, by revising the numerical counts per size designation. Section 920.302(a)(4)(iv) of the order's administrative rules and regulations was revised by an interim final rule issued on September 3, 1998 (63 FR 46861). A final rule published on July 30, 2001, redesignated § 920.302(a)(4)(iv) as (a)(4)(iii)(66 FR 39267).

While this rule increased the number of fruit that could be packed in size designations 30 through 42, experience has shown that further refinement of the California kiwifruit size designations was needed to help California handlers compete more effectively with imported fruit in the marketplace. Handlers want to better meet buyer preferences and buyers generally prefer to purchase containers with a greater number of pieces of fruit in the box. The continued relaxation of pack requirements will permit handlers to pack more individual pieces of fruit in an 8-pound sample for various size designations, and, thus, better meet buyer preferences.

During the spring of 2001, the production area was hit with a severe frost, heavy winds and hail storms. A shortened bloom period in late spring reduced the pollination of the crop and resulted in less fruit development and growth. Unusually hot temperatures during the summer months added further stress to the vines.

On July 11, 2001, the Committee considered the impact of the severe weather conditions, and estimated the 2001–2002 crop would be 6.5 million tray equivalents. During September the Committee staff conducted a pre-harvest check for sizing, quality, and maturity and found the crop was not sizing as expected. Based on the more recent observations, the field staff estimated that the amount of packable fruit would be approximately 5 million tray equivalents, versus the 6.5 million estimated at the July 11, 2001, meeting.

Because of these factors, the Committee called an emergency meeting on September 19, 2001, to discuss the marketing of the short crop and smaller-sized fruit. As previously mentioned, the rules and regulations specify a maximum number of fruit per 8-pound sample for each numerical count size designation for kiwifruit packed in bags, volume fill, or bulk containers. To enable the industry to better market the short 2001 crop, the Committee unanimously recommended relaxing the pack regulations under § 920.302(a)(4)(iii) by increasing the maximum number of fruit per 8-pound sample for size designations 42 through 25, eliminating size designation 21, and adding new size designations 20 and 23. These changes are shown in the following chart:

Size designation	Maximum number of fruit per 8-pound sample
20	**27**
23	**29**
25	27 * 32
27/28	30 * 35
30	33 * 38
33	36 * 43
36	42 * 45
39	48 * 49
42	53 * 54
45	55

* Prior number of fruit per 8-pound sample. New size designations are in bold.

This chart is commonly referred to as the ''Size Designation Chart'' in the industry. Increasing the maximum number of fruit per 8-pound sample will allow some smaller-sized fruit to be packed into a larger-size category. This rule continues to allow one more piece of fruit to be packed per 8-pound sample in size designations 42 and 39, three more pieces of fruit to be packed in size designation 36, seven more pieces of fruit to be packed in size designation 33, and five more pieces of fruit to be packed in size designations 27/28 and 25, respectively.

Additionally, handlers have the option of packing fruit as size designation 23, 20, or 45. This rule continues to reduce the percentage of fruit packed in the 40 series and continues to increase the percentage of fruit packed in the 20 and 30 series. The Committee estimated that increasing the maximum number of fruit per 8-pound sample for size designation 39 would move approximately 600,000 pounds of kiwifruit from the former size designation 42 into the new size 39 designation. Increasing the maximum number of fruit per 8-pound sample for size designation 33 will allow handlers to pack approximately 2,500,000 pounds more kiwifruit into new size designation 33. Thus, handlers will be better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. This change does not affect the minimum size and will not allow fruit currently considered ''undersized'' to be shipped. The Committee further believes that increasing the maximum number of fruit in the 8-pound sample will help reduce the sizing differences between California and imported kiwifruit. This should help California handlers compete more effectively in the marketplace.

Final Regulatory Flexibility Analysis

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

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

There are approximately 50 handlers of California kiwifruit subject to regulation under the marketing order and approximately 360 growers in the production area. Small agricultural service firms are defined by the Small Business Administration as those whose annual receipts are less than $5,000,000, and small agricultural growers are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $750,000. None of the 50 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. In addition, 354 of the 360 growers subject to regulation have annual sales less than $750,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, continues the elimination of one size designation, and the addition of two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace. Authority for this action is provided in § 920.52 of the order.

The Committee unanimously recommended relaxing the pack requirements by increasing the

maximum number of fruit per 8-pound sample for size designations 42 through 25, eliminating size designation 21, and adding size designations 20 and 23 as shown in the following chart:

Size designation	Maximum number of fruit per 8-pound sample
20	**27**
23	**29**
25	27* 32
27/28	30* 35
30	33* 38
33	36* 43
36	42* 45
39	48* 49
42	53* 54
45	55

*Prior number of fruit per 8-pound sample. New size designations are in bold.

This chart is commonly referred to as the ''Size Designation Chart'' in the industry. Increasing the maximum number of fruit per 8-pound sample will allow some smaller-sized fruit to be packed into a larger-size category. This rule continues to allow one more piece of fruit to be packed per 8-pound sample in size designations 42 and 39, three more pieces of fruit to be packed in size designation 36, seven more pieces of fruit to be packed in size designation 33, and five more pieces of fruit to be packed in size designations 27/28 and 25.

Additionally, handlers have the option of packing fruit as size designation 23, 20, or size designation 45. This rule continues to reduce the percentage of fruit packed in the 40 series and continues to increase the percentage of fruit packed in the 20 and 30 series. The Committee estimated that increasing the maximum number of fruit per 8-pound sample for size designation 39 would move approximately 600,000 pounds of kiwifruit from the former size designation 42 into the new size 39 designation. U.S. retailers prefer size 33 kiwifruit. Increasing the maximum number of fruit per 8-pound sample for size designation 33 will allow handlers to pack approximately 2,500,000 pounds more kiwifruit into new size designation 33. Thus, handlers will be better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. This change does not affect the minimum size and will not allow fruit currently considered undersized to be shipped. Imports from Europe have increased 1,409 percent since 1992–1993. During the 2000–01 season approximately 3.2 million tray equivalents were imported from Europe.

The Committee further believes that relaxing the pack requirements to permit more individual pieces of fruit in an 8-pound sample for various size designations will reduce the sizing differences between California and imported kiwifruit. Reducing the size differences should help California handlers compete more effectively in the marketplace, as buyers apparently choose to purchase containers with more pieces of fruit per container, and this relaxation permits increases in the number of pieces of fruit in bags, volume-fill, and bulk containers. The Committee has estimated that utilizing the new size designations will yield the California kiwifruit industry $24,407,981 in FOB value versus the $22,442,648 received for the 2000–2001 season. This is an additional $2.0 million in FOB value for the 2001–2002 season.

The Committee wants to maintain the reputation California has established for uniformly packed containers of kiwifruit and believes that these changes will not significantly impact uniformity. The increase in the maximum number of fruit per 8-pound sample is not so significant that consumers or retailers will notice a visual size difference in the fruit being offered. The California Kiwifruit Commission, which administers a State program utilized to promote kiwifruit grown in California, conducted kiwifruit-sizing studies several years ago. These studies show that there is only an average of 3/32-inch to 4/32-inch difference in fruit length between sizes, and 2/32-inch to 3/32-inch difference in fruit width. These differences are indistinguishable to the eye.

These changes continue to address the marketing and shipping needs of the kiwifruit industry and are in the interest of growers, handlers, buyers, and consumers. The impact of these changes is expected to be beneficial to all growers and handlers regardless of size. There is widespread agreement in the industry to relax the pack requirements.

The Committee considered other alternatives to relaxing packing requirements but determined that these suggestions will not adequately address the industry problems.

One suggestion was to change the minimum size. The Committee did not adopt this suggestion because it believes that lowering the minimum size will diminish the quality image of California kiwifruit.

Another suggestion presented was to leave the size designation chart unchanged. The Committee did not adopt this suggestion because it believes that handlers would benefit from the size designation changes.

After considering these alternatives, the Committee recommended relaxing the pack requirements for seven size designations, eliminating one size designation, and adding two new size designations. Small and large growers and handlers are expected to benefit from this relaxation. It is estimated that grower returns will increase by approximately $1.00 per box.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 19, 2001, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on October 29, 2001 (66 FR 54411). Copies of the rule were mailed by the Committee staff to all Committee members and kiwifruit handlers. In addition, the rule was made available through the internet by the Office of the Federal Register and USDA. That rule provided a 60-day comment period which ended December 28, 2001. No comments were received. A correction concerning this action was published in the **Federal Register** on January 11, 2002. (67 FR 1413). The interim final rule, as published, contained an error in the amendatory instructions affecting 7 CFR part 920. The amendatory instructions incorrectly indicated that the revised table in § 920.302 appears at the end of paragraph (a)(4)(iv). The revised table actually appears at the end of paragraph (a)(4)(iii) of that section and appropriate corrections were made to the interim final rule.

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

address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, which was published in the **Federal Register** (66 FR 54411, October 29, 2001) and corrected in the **Federal Register** (67 FR 1413, January 11, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 920 which was published at 66 FR 54411, October 29, 2001, and corrected at 67 FR 1413 on January 11, 2002, is adopted as a final rule without change.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6138 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV02–925–1 FR]

Grapes Grown in a Designated Area of Southeastern California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the California Desert Grape Administrative Committee (Committee) for the 2002 and subsequent fiscal periods from $0.01 to $0.015 per 18-pound lug of grapes handled. The Committee locally administers the marketing order which regulates the handling of grapes grown in a designated area of southeastern California. Authorization to assess grape handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: March 15, 2002.

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 925, both as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2002 and subsequent fiscal periods from $0.01 to $0.015 per 18-pound lug of grapes.

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

For the 1997 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on November 5, 2001, and estimated a January 2002 beginning reserve of approximately $124,800, and unanimously recommended expenditures of $195,215 and an assessment rate of $0.015 per 18-pound lug of grapes for the 2002 fiscal period. In comparison, last year's budgeted expenditures were $186,023. The assessment rate of $0.015 is $0.005 higher than the rate currently in effect. The higher assessment rate is needed to offset increases in salaries and to keep the operating reserve at an adequate level.

The expenditures recommended by the Committee for the 2002 fiscal period include $100,000 for research, $28,200 for compliance activities, $41,000 for salaries, and $26,015 for other expenses. Budgeted expenses for these items in 2001 were $100,000, $35,200, $15,000, and $35,823, respectively.

The assessment rate recommended by the Committee was chosen because it will provide $142,500 in assessment income (9.5 million lugs x $.015 per lug) and, when $2,000 in interest income and $50,715 of its reserves are used for

approved expenses, allow the Committee to end the 2002 fiscal period with a $74,085 reserve. The current rate of $.01 per lug would generate $95,000 in assessment income, and require the Committee to use the $2,000 in interest and $98,215 of its reserves to cover its anticipated expenses. This will result in an ending reserve of $26,585, which was not acceptable to the Committee. The December 2002 ending reserve funds (estimated to be $74,085) with the new assessment rate will be kept within the maximum permitted by the order, approximately one fiscal period's expenses (§ 925.42).

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

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

Final Regulatory Flexibility Analysis

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

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

There are approximately 80 producers of grapes in the production area and approximately 26 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Last year, about 69 percent of the handlers could be considered small businesses under SBA's definition and about 31 percent could be considered large businesses. It is estimated that about 88 percent of the producers have annual receipts less than $750,000. Therefore, the majority of handlers and producers of grapes may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2002 and subsequent fiscal periods from $0.01 to $0.015 per 18-pound lug of grapes. The Committee unanimously recommended expenditures of $195,215 and an assessment rate of $0.015 per 18-pound lug of grapes for the 2002 fiscal period. The assessment rate of $0.015 is $0.005 higher than the 2001 rate. The volume of assessable grapes is estimated at 9.5 million 18-pound lugs. Thus, the $0.015 rate should provide $142,500 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve should be adequate to cover budgeted expenses.

The expenditures recommended by the Committee for the 2002 fiscal period include $100,000 for research, $28,200 for compliance activities, $41,000 for salaries, and $26,015 for other expenses. Budgeted expenses for these items in 2001 were $100,000, $35,200, $15,000, and $35,823, respectively.

Prior to arriving at this budget the Committee considered alternative expenditure levels, but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Committee was derived by the following formula: Anticipated expenses ($195,215), plus the desired 2002 ending reserve ($74,085), minus the 2002 beginning reserve ($124,800), minus the anticipated interest income ($2,000), divided by the total estimated 2002 shipments (9.5 million 18-pound lugs). This calculation results in the $0.015 assessment rate. This rate will provide sufficient funds in combination with interest and reserve funds to meet the anticipated expenses of $195,215 and results in a December 2002 ending reserve of $74,085, which is acceptable to the Committee. The December 2002 ending reserve funds (estimated to be $74,085) will be kept within the maximum permitted by the order, approximately one fiscal periods' expenses (§ 925.41).

A review of historical information and preliminary information pertaining to the 2002 fiscal period indicates that the on-vine grower price for the 2002 season could range between $5.00 and $9.00 per 18-pound lug of grapes. Therefore, the estimated assessment revenue for the 2002 fiscal period as a percentage of total grower revenue could range between 0.2 and 0.3 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order.

In addition, the Committee's meeting was widely publicized throughout the grape production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 5, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

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

A proposed rule concerning this action was published in the **Federal Register** on January 10, 2002 (67 FR 1315). Copies of the proposed rule were also mailed or sent via facsimile to all grape handlers. Finally, the proposed rule was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending February 11, 2002, was provided for interested persons to respond to the proposal. No comments were received. However, the provisions of proposed § 925.215 have been modified in this action to add specific reference to an 18-pound lug for purposes of clarity.

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

address in the **FOR FURTHER INFORMATION CONTACT** section.

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2002 fiscal period began on January 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable grapes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 925.215 is revised to read as follows:

925.215 Assessment rate.

On and after January 1, 2002, an assessment rate of $0.015 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6145 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV02–959–1 FR]

Onions Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the South Texas Onion Committee (Committee) for the 2001–02 and subsequent fiscal periods from $0.03 to $0.05 per 50-pound container or equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning August 1, 2001, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2001–02 and subsequent fiscal periods from $0.03 to $0.05 per 50-pound container or equivalent of onions handled.

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

For the 2000–01 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal

period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 12, 2001, and unanimously recommended 2001–02 expenses of $115,189.85 for personnel, office, compliance, and partial promotion expenses. The assessment rate and specific funding for research and promotion projects were to be recommended at a later Committee meeting.

The Committee subsequently met on October 10, 2001, and recommended 2001–02 expenditures of $449,189 and an assessment rate of $0.05 per 50-pound container or equivalent of onions. Ten of the 11 Committee members present voted in support of the $0.02 per 50-pound container equivalent increase. One Committee member abstained from voting. In comparison, last year's budgeted expenditures were $306,740. The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas onions, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to $52,576. The Committee believes that a reserve that low is not adequate for its operations.

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $75,190 for administrative expenses, $30,000 for compliance, $254,000 for promotion, and $90,000 for research projects. Budgeted expenses for these items in 2000–01 were $87,109, $27,498, $39,500, and $122,200, respectively. In addition, $30,435 was expended for a retirement package for the outgoing Committee manager.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Onion shipments for the fiscal period are estimated at 7.5 million 50-pound equivalents, which should provide $375,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $276,705) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 959.43).

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

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2001–02 budget has been approved and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 78 producers of onions in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2000–01 marketing year, the industry's 40 handlers shipped onions produced on 15,166 acres with the average and median volume handled being 208,700 and 177,377 fifty-pound bag equivalents, respectively. In terms of production value, total revenues for the 40 handlers were estimated to be $73,879,800, with average and median revenues being $1,846,995 and $1,569,786, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 40 handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other production enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. All of the 78 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed $750,000.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2001–02 and subsequent fiscal periods from $0.03 to $0.05 per 50-pound container equivalent of onions. The Committee recommended 2001–02 expenditures of $449,189 and an assessment rate of $0.05 per 50-pound container or equivalent. The assessment rate of $0.05 is $0.02 higher than the 2000–01 rate. The quantity of assessable onions for the 2001–02 fiscal period is estimated at 7.5 million 50-pound equivalents. Thus, the $0.05 rate should provide $375,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $276,705) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 959.43).

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $75,190 for administrative expenses, $30,000 for compliance, $254,000 for promotion, and $90,000 for research projects. Budgeted expenses for these items in 2000–01 were $87,109, $27,498,

$39,500, and $122,200, respectively. In addition, $30,435 was expended for a retirement package for the outgoing Committee manager.

The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas onions, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to $52,576. The Committee believes that a reserve that low is not adequate for its operations.

The Committee reviewed and recommended 2001–02 expenditures of $449,189, which included an increase in its promotion program. Prior to arriving at this budget, the Committee considered information from various sources, including the Committee's Executive Committee, the Research Subcommittee, and the Market Development Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research and promotion projects to the onion industry. The assessment rate of $0.05 per 50-pound equivalent of assessable onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 7.5 million 50-pound equivalents for the 2001–02 fiscal period. This is approximately $74,190 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the 2002 shipping season indicates that the grower price for the 2001–02 fiscal period could range between $6 and $11 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2001–02 fiscal period as a percentage of total grower revenue could range between 0.45 and 0.83 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 10, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

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

A proposed rule concerning this action was published in the **Federal Register** on January 10, 2002 (67 FR 1317). Copies of the proposed rule were also mailed or sent via facsimile to all onion handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending February 11, 2002, was provided for interested persons to respond to the proposal. No comments were received.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2001–02 fiscal period began August 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period. In addition, the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this rule which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2001, an assessment rate of $0.05 per 50-pound container or equivalent is established for South Texas onions.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6146 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV02–979–1 FR]

Melons Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the South Texas Melon Committee (Committee) for the 2001–02 and subsequent fiscal periods from $0.05 to $0.06 per carton of melons handled. The Committee locally administers the marketing order which regulates the handling of melons grown in South Texas. Authorization to assess melon handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400

Independence Avenue, SW. STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas melon handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons beginning October 1, 2001, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2001–02 and subsequent fiscal periods from $0.05 to $0.06 per carton of melons handled.

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

For the 1999–2000 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on September 25, 2001, and unanimously recommended 2001–02 expenses of $90,888 for personnel, office, compliance, and partial market development expenses. The assessment rate and specific funding for research and promotion projects were to be recommended at a later Committee meeting.

The Committee subsequently met on November 8, 2001, and unanimously recommended 2001–02 expenditures of $314,388 and an assessment rate of $0.06 per carton of melons. In comparison, last year's budgeted expenditures were $241,460. The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas melons, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to $194,687, which is lower than what the Committee needs for operations. This amount is derived by taking the current reserve ($327,200), adding the $166,875 in assessment income based on the old rate (3,337,500 cartons x $0.05 per carton) and anticipated interest totaling $15,000, and then subtracting the 2001–02 budget of $314,388. With the new rate, $200,250 in assessment income would be generated, and the reserve fund would only drop to $228,062.

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $60,888 for administrative expenses, $20,000 for compliance, $137,000 for market development, and $96,500 for research projects. Budgeted expenses for these items in 2000–01 were $70,351, $21,604, $25,000, and $96,500, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of South Texas melons, anticipated interest income, and the amount of funds in the Committee's operating reserve. Melon shipments for the fiscal period are estimated at 3,337,500 cartons, which should provide $200,250 in assessment income at the $0.06 per carton rate. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses for the 2001–02 fiscal period. Funds in the reserve (currently $327,200) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 979.44).

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

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2001–02 budget has been approved and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 33 growers of melons in the production area and approximately 22 handlers subject to regulation under the marketing order. Small agricultural growers are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Most of the handlers are vertically integrated corporations involved in growing, shipping, and marketing melons. For the 2000–01 marketing year, the industry's 22 handlers shipped melons produced on 6,979 acres with the average and median volume handled being 192,450 and 84,532 cartons, respectively. In terms of production value, total revenue for the 22 handlers was estimated to be $37,478,447, with the average and median revenues being $1,703,566 and $748,273, respectively.

The South Texas melon industry is characterized by growers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of melons. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the melon production season is complete. For this reason, typical melon growers and handlers either double-crop melons during other times of the year or produce alternate crops, like onions.

Based on the SBA's definition of small entities, the Committee estimates that half of the 22 handlers regulated by the order would be considered small entities if only their spring melon revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. Of the 33 growers within the production area, few have sufficient acreage to generate sales in excess of $750,000; therefore, the majority of growers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2001–02 and subsequent fiscal periods from $0.05 to $0.06 per carton of melons. The Committee unanimously recommended 2001–02 expenditures of $314,388 and an assessment rate of $0.06 per carton of melons. In comparison, last year's budgeted expenditures were $241,460. The assessment rate of $0.06 is $0.01 higher than the rate currently in effect. At the rate of $0.06 per carton and an estimated 2001–02 melon production of 3,337,500 cartons, the projected income derived from handler assessments ($200,250), along with interest and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $327,200) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 979.44).

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $60,888 for administrative expenses, $20,000 for compliance, $137,000 for market development, and $96,500 for research projects. Budgeted expenses for these items in 2000–01 were $70,351, $21,604, $25,000, and $96,500, respectively.

The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas melons, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to $194,687, which is lower than what the Committee needs for operations. With the increased rate, the reserve fund would drop to $228,062.

The Committee voted to increase its assessment rate because the current rate would reduce the Committee's reserve funds beyond the level acceptable to the Committee. Assessment income, along with interest and funds from the Committee's authorized reserve, will provide the Committee with adequate funds to meet its 2001–02 fiscal period's expenses.

The Committee reviewed and unanimously recommended 2001–02 expenditures of $314,388, which included an increase in its market development program. Prior to arriving at this budget, the Committee considered information from various sources, including the Research and the Market Development Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research and market development projects to the melon industry. The assessment rate of $0.06 per carton of assessable melons was then determined by considering the total recommended budget, the quantity of assessable melons estimated at 3,337,500 cartons for the 2001–02 fiscal period, anticipated interest income, and the funds in the Committee's operating reserve. The recommended rate will generate $200,250, which is $114,138 below the anticipated expenses. The Committee found this acceptable because interest and reserve funds will be used to make up the deficit.

A review of historical information and preliminary information pertaining to the 2002 shipping season indicates that the grower price for the 2001–02 fiscal period could range between $7 and $11 per carton of cantaloupes and between $6 and $10 per carton of honeydew melons. Therefore, the estimated assessment revenue for the 2001–02 fiscal period as a percentage of total grower revenue could range between 0.9 and 0.5 percent for cantaloupes and between 1.0 and 0.6 percent for honeydew melons.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas melon industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 8, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

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

A proposed rule concerning this action was published in the **Federal Register** on January 10, 2002 (67 FR 1319). Copies of the proposed rule were also mailed or sent via facsimile to all melon handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending February 11, 2002, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the

compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2001–02 fiscal period began on October 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable melons handled during such fiscal period. In addition, the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 979.219 is revised to read as follows:

§ 979.219 Assessment rate.

On and after October 1, 2001, an assessment rate of $0.06 per carton is established for South Texas melons.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6140 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV02–982–1 IFR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim Final and Final Free and Restricted Percentages for the 2001–2002 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes interim final and final free and restricted percentages for domestic inshell hazelnuts for the 2001–2002 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The interim final free and restricted percentages are 4.9363 and 95.0637 percent, respectively, and the final free and restricted percentages are 6.1048 and 93.8952 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

DATES: This interim final rule is effective March 15, 2002. Comments received by May 13, 2002, will be considered prior to issuance of a final rule.

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

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

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

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

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 2001–2002 marketing year (July 1, 2001, through June 30, 2002). This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed

not later than 20 days after the date of the entry of the ruling.

This rule establishes marketing percentages which allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year, and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. The Board also computes and announces preliminary free and restricted percentages for that year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three ''normal'' years'' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. The Board may increase the three-year average by up to 25 percent, if market conditions warrant an increase. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

The quantity to be marketed is broken down into free and restricted percentages to make available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled or otherwise disposed of by handlers (restricted). Prior to September 20 of each marketing year, the Board must compute and announce preliminary free and restricted percentages. The preliminary free percentage releases 80 percent of the inshell trade demand to the domestic market. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate.

The National Agricultural Statistics Service (NASS) has estimated hazelnut production at 48,000 tons for the Oregon and Washington area. The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

The Board adjusted the crop estimate down to 44,588 tons by taking into consideration the average crop disappearance over the preceding three years (7.12 percent) and the undeclared carry-in (6 tons.) Disappearance is the difference between orchard-run production (crop estimate) and the available supply of merchantable product available for sale by handlers. This difference or disappearance consists of unharvested hazelnuts, cull product that is harvested and delivered to handlers but later discarded, or product used on the farm, sold locally, or otherwise disposed of by producers. The Board computed the adjusted inshell trade demand of 2,201 tons by taking the difference between the average of the past three years' sales (3,473 tons) and the declared carry-in from last year's crop (1,272 tons.)

The Board computed and announced preliminary free and restricted percentages of 3.9495 percent and 96.0505 percent, respectively, at its August 30, 2001, meeting. The Board computed the preliminary free percentage by multiplying the adjusted trade demand by 80 percent and dividing the result by the adjusted crop estimate (2,201 tons x 80 percent/44,588 tons = 3.9495 percent.) The preliminary free percentage thus initially released 1,761 tons of hazelnuts from the 2001 supply for domestic inshell use, and the restricted percentage withheld 42,804 tons for the export and kernel market.

Under the order, the Board must meet again on or before November 15 to recommend interim final and final percentages. The Board uses current crop estimates to calculate interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining 20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season (i.e., desirable carry-out). The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 2001, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The interim final free and restricted percentages were recommended at 4.9363 percent free and 95.0637 percent restricted. Final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carry-out, were recommended at 6.1048 percent free and 93.8952 percent restricted effective May 31, 2002. The final free percentage releases 2,722 tons of inshell hazelnuts from the 2001 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2001–2002 marketing year:

	Tons
Inshell supply:	
(1) Total production (crop estimate)	48,000
(2) Less substandard, farm use (disappearance; 7.12 percent of Item 1)	3,418
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	44,582
(4) Plus undeclared carry-in as of July 1, 2001 (subject to regulation)	6
(5) Supply subject to regulation (Item 3 plus Item 4)	44,588
Inshell trade demand:	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	3,473
(7) Less declared carry-in as of July 1, 2001 (not subject to regulation)	1,272
(8) Adjusted Inshell Trade Demand (Item 6 minus Item 7)	2,201
(9) Desirable carry-out on August 31, 2002 (15 percent of Item 6)	521
(10) Adjusted Inshell Trade Demand plus desirable carry-out (Item 8 plus Item 9)	2,722

Percentages	Free	Restricted
(11) Interim final percentages (Item 8 divided by Item 5) × 100	4.9363	95.0637
(12) Interim final free in tons (Item 8)	2,201	
(13) Interim final restricted in tons (Item 5 minus Item 8)		42,387

Percentages	Free	Restricted
(14) Final percentages (Item 10 divided by Item 5) × 100	6.1048	93.8952
(15) Final free in tons (Item 10)	2,722	
(16) Final restricted in tons (Item 5 minus Item 10)		41,866

In addition to complying with the provisions of the order, the Board also considered USDA's 1982 ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments before allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available an additional 521 tons for desirable carry-out effective May 31, 2002. The total free supply for the 2001–2002 marketing year is 3,994 tons of hazelnuts, which is the sum of the final trade demand of 3,473 tons and the 521 ton desirable carry-out. This amount is 115 percent of prior years' sales and exceeds the goal of the Guidelines.

Initial Regulatory Flexibility Analysis

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

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

Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000. There are approximately 800 producers of hazelnuts in the production area and approximately 19 handlers subject to regulation under the order. Average annual hazelnut revenue per producer is approximately $35,700, computed by dividing National Agriculture Statistics Service (NASS) figures for the average value of production for 1999 and 2000 ($28.563 million) by the number of producers. The level of sales of other crops by hazelnut producers is not known. In addition, based on Board records, about 95 percent of the handlers ship under $5,000,000 worth of hazelnuts on an annual basis. In view of the foregoing, it can be concluded that the majority of hazelnut producers and handlers may be classified as small entities.

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

Currently, U.S. hazelnut production is allocated among three market outlets: inshell domestic, inshell export, and shelled (kernel) markets. Handlers and growers receive the highest return on inshell domestic, less for inshell export, and the least for kernels (shelled). Based on Board records of average shipments for 1997–2000, the percentage going to each of those markets was 13 percent (domestic inshell), 46 percent (export inshell) and 41 percent (kernels).

The inshell market can be characterized as having limited demand and being prone to oversupply and low grower prices in the absence of supply restrictions. This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the continental U.S. On average, 76 percent of domestic inshell hazelnut shipments occur between October 1 through November 30, primarily to supply holiday nut demand.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry address its marketing problems by keeping inshell hazelnut supplies in balance with domestic needs. Volume controls fully supply the domestic inshell market while preventing an oversupply of that market. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

This rule implements volume control procedures for the 2001–2002 marketing year by establishing marketing percentages (free and restricted percentages) which determine the quantity of inshell hazelnuts that may be marketed in domestic markets. The free quantity may be marketed in domestic inshell markets and the restricted quantity must be exported, shelled, or otherwise disposed of by handlers. The computations for 2001–2002 are explained herein.

The Board is required to meet prior to September 20 of each marketing year to establish its marketing policy for that year. At its marketing policy meeting, the Board computes and announces its estimate of inshell trade demand, which is the quantity of inshell hazelnuts that handlers typically ship to the domestic market throughout the marketing season. If it determines that volume regulations would tend to effectuate the declared policy of the Act, the Board also computes and announces the preliminary free and restricted percentages for that year. At subsequent meetings, the Board determines interim final percentages and final percentages, which may be the same as, or higher than, the preliminary percentages.

The order specifies that the inshell trade demand be computed by averaging the preceding three ''normal'' years' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. If market conditions warrant, the Board may increase the three-year average by up to 25 percent.

Establishing the preliminary free percentage releases 80 percent of the inshell trade demand to the domestic market. The purpose of releasing only 80 percent is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on the preliminary crop estimate. NASS has estimated hazelnut production at 48,000 tons for the Oregon and Washington area.

At its November 2001 meeting, the Board computed the available supply of

merchantable product for sale by handlers by subtracting the average crop disappearance over the preceding three years (7.12 percent) from the 48,000-ton hazelnut crop estimate. Disappearance consists of (1) unharvested hazelnuts, (2) culled product (nuts that are harvested and delivered to handlers but later discarded), or (3) product used on the farm, sold locally, or otherwise disposed of by producers. Subtracting an additional 6 tons (the undeclared carryin) yielded the adjusted crop estimate of 44,588 tons.

The Board computed the adjusted inshell trade demand of 2,201 tons by taking the difference between the average of the past three years' sales (3,473 tons) and the declared carry-in from last year's crop (1,272 tons.)

The Board computed and announced preliminary free and restricted percentages of 3.9495 percent and 96.0505 percent, respectively, at its August 30, 2001, meeting. The Board computed the preliminary free percentage by multiplying the adjusted inshell trade demand by 80 percent and dividing the result by the adjusted crop estimate: (2,201 tons × 80 percent)/ 44,588 tons = 3.9495 percent. Establishing the 3.9495 percent preliminary free percentage allowed the initial release of 1,761 tons of hazelnuts from the 2001 supply for domestic inshell use. Establishing the 96.0505 percent restricted percentage had the effect of allocating 42,804 tons to the export and kernel markets.

Under the order, the Board must meet again on or before November 15 each year to recommend interim final and final percentages, using current crop estimates. The interim final percentages are calculated in the same way as the preliminary percentages. Computing and announcing the interim final percentage allows the release of the remaining 20 percent (to total 100 percent) of the inshell trade demand previously computed by the Board. In establishing final free percentage and restricted percentages, the Board may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions, to provide an adequate carryover into the following season (i.e., desirable carry-out).

The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 2001, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The recommended interim final free and restricted percentages were 4.9363 percent free and 95.0637 percent restricted. Recommended final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carry-out, were 6.1048 percent free and 93.8952 percent restricted, effective May 31, 2002. Establishing the final free percentage releases for domestic use the full amount of the adjusted inshell trade demand of inshell hazelnuts from the 2001 supply (2,722 tons).

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2001–2002 marketing year:

	Tons
Inshell supply:	
(1) Total production (crop estimate)	48,000
(2) Less substandard, farm use (disappearance; 7.12 percent of Item 1)	3,418
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	44,582
(4) Plus undeclared carry-in as of July 1, 2001 (subject to regulation)	6
(5) Supply subject to regulation (Item 3 plus Item 4)	44,588
Inshell trade demand:	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	3,473
(7) Less declared carry-in as of July 1, 2001 (not subject to regulation)	1,272
(9) Adjusted Inshell Trade Demand (Item 6 minus Item 7)	2,201
(9) Desirable carry-out on August 31, 2002 (15 percent of Item 6)	521
(10) Adjusted Inshell Trade Demand plus desirable carry-out (Item 8 plus Item 9)	2,722

Percentages	Free	Restricted
(11) Interim final percentages (Item 8 divided by Item 5) x 100	4.9363	95.0637
(12) Interim final free in tons (Item 8)	2,201	
(13) Interim final restricted in tons (Item 5 minus Item 8)		42,387
(14) Final percentages (Item 10 divided by Item 5) x 100	6.1048	93.8952
(15) Final free in tons (Item 10)	2,722	
(16) Final restricted in tons (Item 5 minus Item 10)		41,866

In addition to complying with the provisions of the order, the Board also considered USDA's 1982 ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to at least 110 percent of prior years' shipments before allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available an additional 521 tons for desirable carry-out effective May 31, 2002. The total free supply for the 2001–2002 marketing year is 3,994 tons of hazelnuts, which is the sum of the final trade demand of 3,473 tons (average trade acquisitions for three prior years) and the 521 ton desirable carry-out. This amount is 115 percent of prior years' sales and exceeds the 110 percent goal of the Guidelines.

The high level of production and carryin were key market factors leading to the 6.1048 percent final free percentage. Hazelnut production in 2001 is estimated to be an all-time record, 1,000 tons higher than the previous record set in 1997. Even if carryin had been zero, the amount that handlers typically ship into the domestic inshell market (*i.e.*, average trade acquisitions of 3,473 tons) equals about 8 percent of the supply (44,588 tons subject to regulation). However, the

free tonnage carryin level of 1,272 tons was also high (37 percent of the quantity of inshell hazelnuts that handlers typically ship), meaning that even less of the new production was needed to fully supply the 2001–2002 domestic inshell market. Although the domestic inshell market is a relatively small proportion of total sales (13 percent of total shipments), it remains a profitable market segment. The volume control provisions of the marketing order are designed to avoid oversupplying this particular market segment, because that would likely lead to substantially lower grower prices. The other market segments, inshell exports and kernels, are expected to continue to provide good outlets for US hazelnut production.

Since low production years typically follow high production years (a consistent pattern for hazelnuts), lower production is expected in 2002, and burdensome carryin levels will likely be significantly reduced.

Recent production and price data reflect the stabilizing effect of the volume control regulations. Industry statistics show that total hazelnut production has varied widely over the ten year period between 1991 and 2000, from a low of 16,500 tons (inshell) in 1998 to a high of 47,000 tons in 1997. Production in the shortest crop year and the biggest crop year were 55 percent and 157 percent, respectively, of the 10-year average tonnage of 29,880. The coefficient of variation (a standard statistical measure of variability; ''CV'') for hazelnut production over the ten-year period is 0.35. In contrast, the coefficient of variation for hazelnut grower prices is 0.16, less than half the CV for production. The considerably lower variability of prices versus production provides an illustration of the order's price-stabilizing impacts.

Comparing grower revenue to cost is useful in highlighting the impact on growers of recent product and price levels. A recent hazelnut cost of production study from Oregon State University estimated cost of production per acre to be approximately $1,340 for a typical 100-acre hazelnut enterprise. Average hazelnut grower revenue per bearing acre (based on NASS acreage and value of production data) equaled or exceeded that typical cost level twice between 1995 and 2000. Average grower revenue was below typical costs in the other years. Without the stabilizing impact of the order, growers may have lost more money. The volume regulations contribute to orderly marketing and market stability, and help moderate the variation in returns for all producers and handlers, both large and small.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season. This regulation provides equitable allotment of the most profitable market, the domestic inshell hazelnut market. That market is available to all handlers, regardless of size.

As an alternative to this regulation, the Board discussed not regulating the 2001–2002 hazelnut crop. However, without any regulations in effect, the Board believes that the industry would oversupply the inshell domestic market. Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA release of preliminary, interim final, and final quantities of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the U.S. This production represents, on average, less than 5 percent of total U.S. production for other tree nuts, and less than 5 percent of the world's hazelnut production.

Last season, 82 percent of the kernels were marketed in the domestic market and 18 percent were exported. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand other markets with emphasis on the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

Inshell hazelnuts produced under the order compete well in export markets because of quality. Europe has historically been the primary export market for U.S. produced inshell hazelnuts, with a ten-year average of 5,452 tons out of total average exports of 10,236 tons. Recent years have seen a significant shift in export destinations. Last season, inshell shipments to Europe totaled 3,986 tons, representing 28 percent of exports, with the largest share going to Germany. Inshell shipments to Southwest Pacific countries, and Hong Kong in particular, have increased dramatically in the past few years, rising to 58 percent of total exports of 14,400 tons in 2000. The industry continues to pursue export opportunities.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581–0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. This rule does not change those requirements. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, those held on August 31, and November 15, 2001, were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on the establishment of interim final and final free and restricted percentages for the 2001–2002 marketing year under the hazelnut marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to

give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 2001–2002 marketing year began July 1, 2001, and the percentages established herein apply to all merchantable hazelnuts handled from the beginning of the crop year; (2) handlers are aware of this rule, which was recommended at an open Board meeting, and need no additional time to comply with this rule; and (3) interested persons are provided a 60-day comment period in which to respond, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

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

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

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

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

Authority: 7 U.S.C. 601–674.

2. Section 982.249 is added to read as follows:

Note: This section will not be published in the annual Code of Federal Regulations.

§ 982.24 Free and restricted percentages—2001–2002 marketing year.

(a) The interim final free and restricted percentages for merchantable hazelnuts for the 2001–2002 marketing year shall be 4.9363 and 95.0637 percent, respectively.

(b) On May 31, 2002, the final free and restricted percentages for merchantable hazelnuts for the 2001–2002 marketing year shall be 6.1048 and 93.8952 percent, respectively.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6147 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS–01–05]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act (Act) of 1985, to reflect changes in cattle inventories and cattle and beef imports that have occurred since the most recent Board reapportionment rule became effective in 1999. These adjustments are required by the Beef Promotion and Research Order (Order) and will result in a decrease in Board membership from 110 to 108, effective with the Department of Agriculture's (USDA) appointments for terms beginning early in the year 2003.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Marlene M. Betts, Acting Chief, Marketing Programs Branch, Room 2627–S; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251. Telephone number is 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988, the Regulatory Flexibility Act, and the Paperwork Reduction Act

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*). The Administrator of AMS has considered the economic effect of this action on small entities and has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the January 26, 2001, issue of ''Cattle,'' USDA's National Agricultural Statistics Service (NASS) estimates that in 2000 the number of cattle operations in the United States totaled about 1.1 million. The majority of these operations subject to the Order, 7 CFR 1260.101 *et seq.*, are considered small businesses under the criteria established by the Small Business Administration.

This final rule imposes no new burden on the industry. It only adjusts representation on the Board to reflect changes in domestic cattle inventory and cattle and beef imports. This action will adjust representation on the Board, established under the Act. The adjustments are required by the Order and will result in a decrease in Board membership from 110 to 108.

Background and Final Action

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901 *et seq.*) and the Order issued thereunder. Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by USDA from nominations submitted by certified producer organizations. A producer may only be nominated to represent the unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years and not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to USDA modifications in the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that

includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit that has an additional one million head of cattle within a unit qualifies for additional representation on the Board as provided in § 1260.141(e)(4). As provided in § 1260.141(e)(3), importers are represented by a single unit, with the number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The initial Board appointed in 1986 was composed of 113 members. Reapportionment based on a 3-year average of cattle inventory numbers and import data, reduced the Board to 111 members in 1990 and 107 members in 1993 before the Board was increased to 111 members in 1996. The Board was decreased to 110 members in 1999 and will be decreased to 108 members with appointments for terms effective early in 2003.

The current Board representation by States or units has been based on an average of the January 1, 1996, 1997, and 1998 inventory of cattle in the various States as reported by NASS of USDA. Current importer representation has been based on a combined total average of the 1995, 1996, and 1997 live cattle imports as published by the Foreign Agricultural Service of USDA and the average of the 1995, 1996, and 1997 live animal equivalents for imported beef products.

Recommendations concerning Board reapportionment were approved by the Board at its August 9, 2001, meeting. In considering reapportionment, the Board reviewed cattle inventories as well as cattle, beef, and beef product import data for the period January 1, 1998, to January 1, 2001. The Board recommended that a 3-year average of cattle inventories and import numbers should be continued. The Board determined that an average of the January 1, 1999, 2000, and 2001 USDA cattle inventory numbers will best reflect the number of cattle in each State or unit since publication of the 1999 reapportionment rule.

The Board reviewed the February 28, 2001, USDA's Economic Research Service circular, ''Livestock, Dairy and Poultry Situation and Outlook,'' to determine proper importer representation. The Board recommended the use of a combined total of the average of the 1998, 1999, and 2000 cattle import data and the average of the 1998, 1999, and 2000 live animal equivalents for imported beef products. The method used to calculate the total number of live cattle equivalents was the same as that used in the previous reapportionment of the Board. The recommendation for importer representation is based on the most recent 3-year average of data available to the Board at its August 9, 2001, meeting to be consistent with the procedures used for domestic representation.

On October 19, 2001, AMS published in the **Federal Register** (66 FR 53124) for public comment a proposed rule providing for the adjustment in Board membership. The proposed rule was published with a request for comments to be submitted to USDA by December 18, 2001.

USDA received one comment concerning the proposed rule for Board reapportionment. The comment was from a cattle producer and supported the reapportionment plan.

Thus, the reapportionment of the Board in this final rule is unchanged from the proposed rule. This final rule decreases the number of representatives on the Board from 110 to 108. Five States—Alabama, Illinois, Kentucky, New York, and Wisconsin—lose one member each; two States and one unit—New Mexico, Wyoming, and Importer unit—gain one member each. In addition, because South Carolina no longer has sufficient cattle inventory to qualify for a position on the board independently, South Carolina will be merged with Georgia, a contiguous State that has only one member, to form a Southeast unit. The combined cattle inventory of South Carolina and Georgia will entitle the Southeast unit to two members on the Board, thus enabling both States to be represented. The States and units affected by the reapportionment plan and the current and revised member representation per unit are as follows:

States	Current Representation	Revised Representation
1. Alabama	2	1
2. Illinois	2	1
3. Kentucky	3	2
4. New Mexico	1	2
5. New York	2	1
6. Wisconsin	4	3
7. Wyoming	1	2
8. Importer unit	7	8
9. Southeast unit	.....	2
South Carolina	1	.....
Georgia	1	.....

Board representation for the entire 40 units is shown in the revised § 1260.141(a) contained herein.

The 2001 nomination and appointment process was in progress while the Board was developing its recommendations. Thus, the Board reapportionment as provided for under the rulemaking will be effective with 2002 nominations and appointments that will be effective early in the year 2003.

This action makes final the provisions of the proposed rule published at 66 FR 53124 on October 19, 2001.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 *et seq.*

2. In § 1260.141, paragraph (a) and the table immediately following it, are revised to read as follows:

§ 1260.141 Membership of Board.

(a) Beginning with the 2002 Board nominations and the associated appointments effective early in the year 2003, the United States shall be divided into 39 geographical units and 1 unit representing importers, and the number of Board members from each unit shall be as follows:

CATTLE AND CALVES [1]

State/unit	(1,000 head)	Directors
1. Alabama	1,440	1
2. Arizona	833	1
3. Arkansas	1,823	2
4. California	5,117	5
5. Colorado	3,167	3
6. Florida	1,820	2
7. Idaho	1,940	2
8. Illinois	1,497	1
9. Indiana	953	1
10. Iowa	3,683	4
11. Kansas	6,617	7
12. Kentucky	2,303	2
13. Louisiana	887	1

CATTLE AND CALVES [1]—Continued

State/unit	(1,000 head)	Directors
14. Michigan	1,013	1
15. Minnesota	2,533	3
16. Mississippi	1,100	1
17. Missouri	4,333	4
18. Montana	2,583	3
19. Nebraska	6,650	7
20. Nevada	517	1
21. New Mexico	1,617	2
22. New York	1,433	1
23. North Carolina	957	1
24. North Dakota	1,927	2
25. Ohio	1,237	1
26. Oklahoma	5,183	5
27. Oregon	1,447	1
28. Pennsylvania	1,653	2
29. South Dakota	3,950	4
30. Tennessee	2,167	2
31. Texas	13,900	14
32. Utah	903	1
33. Virginia	1,650	2
34. Wisconsin	3,383	3
35. Wyoming	1,563	2
36. Northwest		1
Alaska	11	
Hawaii	162	
Washington	1,187	
Total	1,408	
37. Northeast		1
Connecticut	65	
Delaware	28	
Maine	99	
Massachusetts	55	
New Hampshire	45	
New Jersey	50	
Rhode Island	6	
Vermont	300	
Total	647	
38. Mid-Atlantic		1
District of Columbia	0	
Maryland	243	
West Virginia	420	
Total	663	
39. Southeast		2
Georgia	1,293	
South Carolina	463	
Total	1,756	
40. Importer [2]	7,654	8

[1] 1999, 2000, and 2001 average of January 1 cattle inventory data.

[2] 1998, 1999, and 2000 average of annual import data.

* * * * *

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6141 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 319, and 381

[Docket No.01–016N]

Use of Transglutaminase Enzyme and Pork Collagen as Binders in Certain Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Affirmation of effective date for direct final rule.

SUMMARY: On October 31, 2001, the Food Safety and Inspection Service (FSIS) published a direct final rule ''Use of Transglutaminase Enzyme and Pork Collagen as Binders in Certain Meat and Poultry Products'' in the **Federal Register**. This direct final rule notified the public of FSIS's intention to amend the Federal meat and poultry products inspection regulations to permit the use of one or both of these substances, in limited amounts, as binders in certain standardized meat and poultry products. This direct final rule also announced the Agency's intention to prescribe labeling requirements when tranglutaminase enzyme (TG enzyme) is used to fabricate or reform cuts of meat or poultry. FSIS received one comment in response to the direct final rule. However, the comment was not an adverse comment or notice of intent to submit an adverse comment. Therefore, FSIS is affirming the December 31, 2001, effective date for this direct final rule.

EFFECTIVE DATE: December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0279

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2001, FSIS published a direct final rule ''Use of Transglutaminase Enzyme and Pork Collagen as Binders in Certain Meat and Poultry Products'' (66 FR 54912). This direct final amended the Federal meat inspection regulations to permit the use of pork collagen and TG enzyme, in limited amounts, as binders in certain standardized meat food products and amended the poultry products inspection regulations to permit the use of TG enzyme, in limited amounts, in certain standardized poultry products. This direct final rule also amended the meat and poultry products inspection regulations to require that, when TG enzyme is used to fabricate or reform cuts of meat or poultry, the resulting product bear labeling to indicate that it has been formed from pieces of whole muscle meat, or that it has been reformed from a single cut. This direct final was in response to petitions submitted to the Agency by Ajinomoto, U.S.A., Inc. and AMPC, Corp.

On December 3, 2001, FSIS received a comment from Hogan & Hartson, L.L.P. on behalf of Ajinomoto USA, Inc., in response to the rulemaking. The commenter, also one of the petitioners, requested that FSIS provide clarification on the scope of the direct final rule. Specifically, Ajinomoto requested that FSIS clarify that the Agency intended to allow the use of TG enzyme in cured pork products under 9 CFR 319.104 when it published the direct final rule. The commenter noted that in its petition it had specifically requested that the standard of identity for cured pork products under 9 CFR 319.104 be amended to provide for the use of TG enzyme as a binder and provided data in support of this request. The commenter also expressed full support for the rule and stated that the comment was not intended to be an adverse comment but rather a clarification on the scope of the final rule.

When it began development of the direct final rule, FSIS had determined that, based on the data submitted by Ajinomoto, TG enzyme was suitable for use as a binder in sausages as provided under part 319 of title 9. While the rule was under development, Ajinomoto submitted additional data to support the use of TG enzyme in other standardized products, including cured pork products under 9 CFR 319.140. Upon review of the additional data, FSIS determined that, in addition to sausages as provided under part 319, TG enzyme was suitable for use in restructured meats (9 CFR 319.15(d)), roast beef parboiled and steam roasted (9 CFR 319.104) cooked sausages (9 CFR 319.180) and poultry rolls (9 CFR 381.159), and incorporated these findings into the direct final rule. However, when it incorporated these products in the direct final rule, the Agency was still reviewing the data submitted on the use of TG enzyme in cured pork products defined under 9 CFR 319.104. Thus, the direct final rule does not provide for the use of TG enzyme in these products. FSIS ultimately determined that TG enzyme is suitable for use as a binder in cured pork products under 9 CFR 319.104. In response to the commenter's request to clarify the scope of the direct final rule,

the rule, as published, is not intended to provide for the use of TG enzyme in cured pork products under 9 CFR 319.104. However, because FSIS ultimately found that TG enzyme is suitable for use as a binder in these standardized products, the Agency intends to publish another direct final rule to permit such a use.

Because FSIS did not receive any adverse comments or notice of intent to submit adverse comments in response to the direct final rule, the effective date remains as December 31, 2001.

Additional Public Notification

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

Done at Washington, DC, on: March 11, 2002.

Margaret O'K Glavin,

Acting Administrator.

[FR Doc. 02–6124 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30299; Amdt. No. 434]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this 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. For the same reason, the FAA certifies that this amendment 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 95

Airspace, Navigation (air).

Issued in Washington, D.C. on March 8, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, April 18, 2002.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 434 effective date: April 18, 2002]

From	To	MEA
§ 95.1001 Direct Routes—U.S. Atlantic Routes—G437 Is Amended To Read in Part		
Mapyl, OA FIX	Elbow, BS FIX	7000
Bahamas Routes—063V Is Added To Read		
Kuray, BS FIX *1500—MOCA	Nassau, BS, VOR/DME	*2000
§ 95.6001 Victor Routes—U.S. § 95.6002 VOR Federal Airway 2 Is Amended To Read in Part		
Alexandria, MN VOR/DME	Gopher, MN VORTAC	3400
§ 95.6051 VOR Federal Airway 51 Is Amended To Read in Part		
Alma, GA, VORTAC *1700—MOCA	Dublin, GA VORTAC	*3000
§ 95.6066 VOR Federal Airway 66 Is Amended To Read in Part		
Baret, CA, FIX *6700—MCA Kumba, CA FIX, W BND	*Kumba, CA FIX	8000
Kumba, CA FIX	Imperial, CA VORTAC	4100
§ 95.6093 VOR Federal Airway 93 Is Amended To Read in Part		
Vinny, PA FIX *10000—MRA **2600—MOCA	*Roast, PA FIX	**4500
Roast, PA FIX *2600—MOCA	Lancaster, PA VORTAC	*4500
§ 95.6157 VOR Federal Airway 57 Is Amended To Read in Part		
Alma, GA VORTAC *1700—MOCA	Lotts, GA FIX	*3000
Lotts, GA FIX *1700—MOCA	Allendale, SC VOR	*6000
§ 95.6161 VOR Federal Airway 161 Is Amended To Read in Part		
Ardmore, OK VORTAC	Phara, OK FIX	3000
§ 95.6184 VOR Federal Airway 184 Is Amended To Read in Part		
Delro, PA FIX *10000—MRA *3900—MOCA	**Roast, PA FIX	**10000
Roast, PA FIX *3900—MOCA	Modena, PA VORTAC	*10000
§ 95.6194 VOR Federal Airway 194 Is Amended To Read in Part		
Hobby, TX VOR/DME	Sabine Pass, TX VOR/DME	3000
§ 95.6198 VOR Federal Airway 198 Is Amended To Read in Part		
Hobby, TX VOR/DME	Sabine Pass, TX VOR/DME	3000
§ 95.6362 VOR Federal Airway 362 Is Amended To Read in Part		
Brunswick, GA, VORTAC *1700—MOCA	Alma, GA VORTAC	*3000
Alma, GA VORTAC *1900—MOCA	Vienna, GA VORTAC	*3000
§ 95.6457 VOR Federal Airway 457 Is Amended To Read in Part		
Lancaster, PA VORTAC *10000—MRA	*Roast, PA FIX	**4500

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 434 effective date: April 18, 2002]

From	To	MEA
**2600—MOCA Roast, PA FIX *2600—MOCA	Vinny, PA FIX	*4500
§ 95.6458 VOR Federal Airway 458 Is Amended To Read in Part		
Julian, CA, VORTAC *5600—MCA Kumba, CA FIX, NW BND	*Kumba, CA FIX	7700
Kumba, CA FIX	Imperial, CA VORTAC	4100
§ 95.6474 VOR Federal Airway 474 Is Amended To Read in Part		
Delro, PA FIX *10000—MRA **3900—MOCA	*Roast, PA FIX	**10000
Roast, PA FIX *3900—MOCA	Modena, PA VORTAC	*10000
§ 95.6521 VOR Federal Airway 521 Is Amended To Read in Part		
Teres, FL FIX *7000—MCA CRESS FIX E BND **1400—MOCA	*Cress, FL FIX	**4000
§ 95.6575 VOR Federal Airway 575 Is Amended To Read in Part		
Mile High, CO VORTAC *9500—MCA NIWOT FIX NW BND	*NIWOT, CO FIX	8000
§ 95.6578 VOR Federal Airway 578 Is Amended To Read in Part		
Tift Myers, GA VOR *1900—MOCA	Alma, GA VORTAC	*3000

From	To	MEA	MAA
§ 95.7001 Jet Routes § 95.7138 Jet Route No. 138 Is Amended To Read in Part			
San Antonio, TX VORTAC	Hobby, TX VOR/DME	18000	45000

Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Points V–2 Is Amended To Add Changeover Point			
Gopher, MN VORTAC	Nodine, MN VORTAC	50	Gopher
V–97 Is Amended To Add Changeover Point			
Nodine, MN VORTAC	Gopher, MN VORTAC	60	Nodine
§ 95.6575 VOR Federal Airway 575 Is Amended To Read in Part			
Mile High, CO VORTAC *9500—MCA NIWOT FIX NW BND	*NIWOT, CO FIX	8000	
§ 95.6578 VOR Federal Airway 578 Is Amended To Read in Part			
Tift Myers, GA VOR *1900—MOCA	Alma, GA VORTAC	*3000	

From	To	MEA	MAA
§ 95.7001 Jet Routes § 95.7138 JET ROUTE NO. 138 Is Amended To Read in Part			
San Antonio, TX VORTAC	Hobby, TX VOR/DME	18000	45000

Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Points V–2 Is Amended To Add Changeover Point			
Gopher, MN VORTAC	Nodine, MN VORTAC	50	Gopher
V–97 Is Amended To Add Changeover Point			
Nodine, MN VORTAC	Gopher, MN VORTAC	60	Nodine

[FR Doc. 02–6126 Filed 3–13–02; 8:45 am]
BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL–7153–2]

Approval of the Clean Air Act Section 111 and 112 Delegation of Authority Updates to the Washington State Department of Ecology, Benton Clean Air Authority, Northwest Air Pollution Authority, Puget Sound Clean Air Agency, and Spokane County Air Pollution Control Authority

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency, Region 10 (EPA) is providing public notice of actions which are already final. EPA updated delegation of authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) to the Washington State Department of Ecology (Ecology), Benton Clean Air Authority (BCAA), Northwest Air Pollution Authority (NWAPA), Puget Sound Clean Air Agency (PSCAA), and Spokane County Air Pollution Control Authority (SCAPCA). EPA also delegated of authority for the Consolidated Air Rule (CAR) to Ecology, BCAA, and SCAPCA.

EPA is publishing informational tables in the regulations for NESHAPs and NESHAP source categories that show which subparts these agencies now have authority to implement and enforce. EPA is also publishing revisions to the names and addresses of Region 10 air agencies.

DATES: This rule is effective April 15, 2002.

ADDRESSES: Copies of information supporting this action are available for inspection during normal business hours at the following location: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Tracy Oliver, Office of Air Quality (OAQ–107), EPA, Seattle, Washington, (206) 553–1172.

SUPPLEMENTARY INFORMATION:

Contents

I. Background and Purpose
a. What is the NESHAP program?
b. What is the Consolidated Air Rule (CAR)?
c. What is the purpose of delegating authority for NESHAPs and the CAR?
d. What is the background on delegation to these agencies?
e. How were these actions taken and why is this action being published?
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a. What specific subparts were delegated?
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c. What does updated delegation mean for these agencies?
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I. Background and Purpose

h. What is the NESHAP program?

Hazardous air pollutants are defined in the Clean Air Act (Act) as pollutants that threaten human health through inhalation or other type of exposure. These pollutants are commonly referred to as ''air toxics'' and are listed in Section 112(b)(1) of the Act.

National Emission Standards for Hazardous Air Pollutants (NESHAPs) control emissions of hazardous air pollutants from specific source categories and implement the requirements of Section 112 of the Act. These standards are found in 40 CFR parts 61 and 63.

Section 112(l) of the Act enables EPA to approve state and local air toxics programs or rules such that these agencies can accept delegation of authority for implementing and enforcing the NESHAPs. Typically, a state or local agency requests delegation based on federal rules adopted unchanged into state or local rules.

Pursuant to the authority of Section 112(l) of the Act, EPA previously delegated authority to Ecology, BCAA, NWAPA, PSCAA, and SCAPCA through a formal rule-making process. At the time of delegation, EPA also approved streamlined procedures for requesting and approving delegation of new or updated NESHAPs.

The streamlined process for updating delegation is as follows: (1) The requesting agency sends a letter to EPA asking for delegation of new and/or revised NESHAPS that have been adopted unchanged into their regulations; (2) EPA sends a letter of response granting this delegation request (or explaining why it cannot be granted); (3) the agency does not need to send a response back to EPA; (4) if EPA does not receive a negative response from the requesting agency within 10 days of the signature date of EPA's letter, then the updated delegation becomes final 10 days after the date of EPA's letter.

i. What is the Consolidated Air Rule (CAR)?

The Consolidated Federal Air Rule (CAR) is a pilot rulemaking originating from President Clinton's March 16, 1995 initiative to reinvent environmental regulations. This rule consolidates major portions of the following New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) applicable to storage vessels, process vents, transfer operations, and equipment leaks within the Synthetic Organic Chemical Manufacturing Industry (SOCMI): 40 CFR part 60, subparts A, Ka, Kb, VV, DDD, III, NNN, and RRR; 40 CFR part 61, subparts A, V, Y, and BB; and 40 CFR part 63, subparts A, F, G, and H.

The CAR gathers together applicable Federal SOCMI rules to form one

integrated set of rules. It is an optional compliance alternative for SOCMI sources; sources may choose to comply with the consolidated rule or simply continue to comply with existing applicable rules. The intent of this consolidation is to improve understandability, reduce burden, clarify requirements, and improve implementation and compliance.

The CAR is not a new rule per se, but a repackaging of existing rules. It requires a separate delegation because it consists of new subparts in a new part of the CFR. Because it consolidates and streamlines existing rules—which may already be delegated—EPA can delegate the CAR with no additional burden other than notification. Consequently, EPA approved Ecology, BCAA, and SCAPCA's CAR delegation requests using the same streamlined approval procedures described above.

j. What is the purpose of delegating authority for NESHAPs and the CAR?

One of the goals of the Clean Air Act is to place state and local governments in positions of leadership for air pollution prevention and control. Consistent with the Act, the NESHAP program and the CAR allow EPA to transfer primary implementation and enforcement responsibility to state and local agencies, provided they request delegation and demonstrate adequate resources, procedures, and authority. As with all delegations, EPA retains authority under Section 113 of the Act to implement and enforce any federal air quality standard if needed, including NESHAPs and the CAR.

d. What is the background on delegation to these agencies?

In the past, EPA delegated authority to implement and enforce certain NESHAPs to Ecology, BCAA, NWAPA, PSCAA, and SCAPCA through formal rule-making. (For Ecology, BCAA, and SCAPCA *see* 66 FR 35115 and 66 FR 48221; for NWAPA and PSCAA *see* 63 FR 66054, 63 FR 7793, 64 FR 19719, 65 FR 10391, and 66 FR 14320) These delegations were based on EPA's determination that they have adequate resources and authority to carry-out this responsibility in a manner comparable to EPA.

Recently, all these agencies requested updated delegation of NESHAPs and some requested delegation of the CAR based on implementation of state or local rules that adopt new or more current federal rules by reference. EPA approved these requests because these agencies continue to meet the requirements for delegation.

e. How were these actions taken and why is this action being published?

The purpose of this notice is to notify the public of actions already taken by EPA to delegate new and more current NESHAP standards to Ecology, BCAA, NWAPA, PSCAA, SCAPCA and the CAR to Ecology, BCAA, and SCAPCA. These actions were taken by letter approval as follows:

Ecology—Letter from Ms. Barbara McAllister, Director, EPA, Region 10, Office of Air to Ms. Mary Burg, Program Manager, Air Quality Program, Ecology, signed February 8, 2002, effective February 18, 2002.

BCAA—Letter from Ms. Barbara McAllister, Director, EPA, Region 10, Office of Air to Dr. David Lauer, Executive Director, BCAA, signed February 8, 2002, effective February 18, 2002.

NWAPA—Letter from Ms. Barbara McAllister, Director, EPA, Region 10, Office of Air Quality to Mr. James Randles, Director, NWAPA, signed February 8, 2002, effective February 18, 2002.

PSCAA—Letter from Ms. Barbara McAllister, Director, EPA, Region 10, Office of Air to Mr. Dennis McLerran, Air Pollution Control Officer, PSCAA, signed February 8, 2002, effective February 18, 2002.

SCAPCA—Letter from Ms. Barbara McAllister, Director, EPA, Region 10, Office of Air to Mr. Eric P. Skelton, Director, SCAPCA, signed February 8, 2002, effective February 18, 2002.

These delegations were effective ten days after the signature date. If an agency did not agree to the terms of their delegation, they could submit a written Notice of Objection within 10 days and EPA would withdraw the delegation. No agency submitted a Notice of Objection.

II. Implications

a. What specific subparts were delegated?

Ecology's updated delegation of authority covers standards promulgated and revised as of the dates specified in WAC–173–400–075, amended on August 15, 2001. These are as follows: 40 CFR part 61 and Appendices in affect on February 20, 2001, except Subparts B, H, I, K, Q, R, T, W and M as it applies to nonmajor sources; 40 CFR part 63 and Appendices in effect on February 20, 2001, except Subparts C, E, and M as it applies to nonmajor sources; 40 CFR part 63 subpart MM in effect on March 13, 2001; and 40 CFR part 65 in effect December 14, 2000. New or revised NESHAP and CAR subparts that become effective after the dates cited here are not delegated to Ecology; these remain the responsibility of EPA.

BCAA's updated delegation of authority covers standards promulgated and revised as of the dates specified in WAC–173–400–075, amended on August 15, 2001. These are as follows: 40 CFR part 61 and Appendices in effect on February 20, 2001, except Subparts B, H, I, K, Q, R, T, and W; 40 CFR part 63 and Appendices in effect on February 20, 2001, except Subparts C, E, S, LL and M as it applies to nonmajor sources; 40 CFR part 65 in effect December 14, 2000. New or revised NESHAP and CAR subparts that become effective after the dates cited here are not delegated to BCAA; these remain the responsibility of EPA.

NWAPA's updated delegation of authority covers standards promulgated and revised before July 1, 2000, except as specified in NWAPA's Regulation Section 104.2, amended on June 14, 2001. The delegation excludes: 40 CFR part 61, Subparts B, H, I, K, Q, R, T, and W; and 40 CFR part 63, Subparts LL and S as it applies to Kraft and Sulfite Pulping Mills. New or revised NESHAPs that become effective after July 1, 2001 are not delegated to NWAPA; these remain the responsibility of EPA.

PSCAA's updated delegation of authority covers standards promulgated and revised prior to July 1, 2001 as specified in PSCAA Regulation I, Section 6.11, amended on September 13, 2001. The delegation excludes: 40 CFR part 61, Subparts B, H, I, K, Q, R, T, and W; and 40 CFR part 63, Subparts LL and S as it applies to Kraft and Sulfite Pulping Mills. New or revised NESHAPs that become effective after July 1, 2001 are not delegated to PSCAA; these remain the responsibility of EPA.

SCAPCA's updated delegation of authority covers standards promulgated and revised as of the dates specified in WAC–173–400–075, amended on August 15, 2001. These are as follows: 40 CFR part 61 and Appendices in effect on February 20, 2001, except Subparts B, H, I, K, Q, R, T, and W; 40 CFR part 63 and Appendices in effect on February 20, 2001 except Subparts C, E, LL, M as it applies to nonmajor sources, and S as it applies to Kraft and Sulfite Pulping Mills; 40 CFR part 65 in effect December 14, 2000. New or revised NESHAP and CAR subparts that become effective after the dates cited here are not delegated to SCAPCA; these remain the responsibility of EPA.

b. What are the conditions of these delegations?

These delegations are subject to all federal law, policy, guidance and

determinations pursuant to 40 CFR parts 61, 63, and 65. Some authorities cannot be delegated and are retained by EPA. These include: (1) certain authorities in the General Provisions of Parts 61 and 63; (2) specific provisions within some Part 61 and 63 subparts; and (3) for those agencies receiving delegation of the CAR, 40 CFR part 65, § 65.8 and § 65.46 of subpart C, and § 65.102 of subpart F.

In general, EPA does not delegate any authorities that require implementation through formal rulemaking or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of the Act. Examples of the types of authorities EPA retains are: equivalency determinations, approval of alternative test methods, decisions where federal oversight is needed to ensure national consistency, and decisions that require rulemaking to implement. The authorities listed in the table below are the specific General Provision authorities that cannot be delegated to any state or local agency and are retained by EPA

TABLE 1.—PART 61 AND 63 GENERAL PROVISIONS AUTHORITIES THAT CANNOT BE DELEGATED

Section	Authorities
61.04(b)	Waiver of Recordkeeping.
61.12(d)(1)	Approval of Alternative Means of Emission Limitation.
61.13(h)(1)(ii)	Approval of Major Alternatives to Test Methods.
61.14(g)(1)(ii)	Approval of Major Alternatives to Monitoring.
61.16	Availability of Information.
61.16	Availability of Information.
61.53(c)(4)	List of Approved Design, Maintenance, and Housekeeping Practices for Mercury Chloralki Plants.
63.6(g)	Approval of Alternative Non-Opacity Emission Standards.
63.6(h)(9)	Approval of Alternative Opacity Standard.
63.7(e)(2)(ii) and (f)	Approval of Major Alternative to Test Methods.
63.8(f)	Approval of Major Alternatives to Monitoring.
63.10(f)	Waiver of Recordkeeping—all.

The reader should refer to 40 CFR 63.90 as well as each agency's original delegation for more information about which General Provisions are delegated and which are reserved by EPA. For information about specific exclusions within a particular standard, the reader should refer to that specific subpart in 40 CFR parts 61, 63, and 65.

c. What does updated delegation mean for these agencies?

Ecology, BCAA, NWAPA, PSCAA, and SCAPCA are the primary implementation and enforcement authority for delegated standards. They are the recipient of notifications and reports and the point of contact for most questions and compliance issues. They work directly with owners and operators of affected facilities subject to delegated standards to ensure all required information is submitted to them. EPA ensures that this information is submitted to EPA upon request.

EPA requests that these agencies meet certain reporting requirements. For example, EPA requires submission of source data, compliance information, copies of determinations, copies of notifications pertaining to continuous opacity monitoring use, and copies of information about changes to test methods and monitoring. More detail about these requirements are provided in Ecology, BCAA, NWAPA, PSCAA, and SCAPCA's original delegations.

d. What does updated delegation mean for affected sources?

Sources who are subject to delegated NESHAPs or the CAR will send notifications and reports to their respective agency, except for notifications, reports, and requests that pertain to authorities that are not delegated. The later should be sent to EPA. (see above, ''What are the conditions of these delegations?'')

III. Summary

This document provides public notice of updates to NESHAP and CAR delegations for Ecology, BCAA, NWAPA, PSCAA, and SCAPCA. These delegations are already final and were granted by letter approval from the Director, Office of Air Quality, EPA, Region 10, to the air program directors at Ecology, BCAA, NWAPA, PSCAA, and SCAPCA. These delegations are subject to all Federal law, policy, guidance and determinations issued pursuant to 40 CFR parts 61, 63, and 65. Copies of delegation letters can be obtained by contacting EPA at the address above.

IV. Administrative Requirements

a. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled ''Regulatory Planning and Review.''

This rule is not subject to Executive Order 13045, entitled, ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

b. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local

officials early in the process of developing the proposed regulation.

This rule 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, because it merely approves a state program and rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this rule.

Although Section 6 of the Executive Order does not apply to this rule, EPA did consult with representatives of state government in developing this rule, and this rule is in response to the State's delegation request.

c. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule.

d. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government entities with jurisdiction over populations of less than 50,000.

Delegation of authority to implement and enforce unchanged federal standards under Section 112(l) of the CAA does not create any new requirements but simply transfers primary implementation authorities to the state (or local) agency. Therefore, because this action does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

e. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the delegation action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

f. Submission to Congress and the Comptroller General

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**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

g. Petitions for Judicial Review

Under Section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 13, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* Section 307(b)(2)).

List of Subjects

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Radionuclides, Radon, Reporting and recordkeeping requirements, Uranium, Vinyl chloride.

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 20, 2002.

Ron Kreizenbeck,

Acting Regional Administrator, Region 10.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR parts 61 and 63 as follows:

PART 61—[AMENDED]

1. The authority citation for Part 61 continues to read as follows:

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

Subpart A—General Provisions

2. Section 61.04 is amended by adding paragraph (b)(N); revising paragraphs (b)(C); (b)(MM) introductory text, (b)(MM)(i) through (vii); (b)(WW) and (c)(10) to read as follows:

§ 61.04 Addresses.

* * * * *

(b) * * *

(C) State of Alaska. (i) Alaska Department of Environmental Conservation (ADEC), 410 Willoughby

Avenue, Suite 303, Juneau, AK 99801–1795, *http://www.state.ak.us/local/akpages/ENV.CONSERV/home.htm*.

(ii) See paragraph (c)(10) of this section for a table indicating the delegation status of National Emission Standards for Hazardous Air Pollutants for Region 10—Alaska, Idaho, Oregon, and Washington.

* * * * *

(N) State of Idaho. (i) Idaho Department of Environmental Conservation (IDEQ), 1410 N. Hilton, Boise, ID 83706, *http://www2.state.id.us/deq/*.

(ii) See paragraph (c)(10) of this section for a table indicating the delegation status of National Emission Standards for Hazardous Air Pollutants for Region 10—Alaska, Idaho, Oregon, and Washington.

* * * * *

(MM) State of Oregon. (i) Oregon Department of Environmental Quality (ODEQ), 811 SW Sixth Ave, Portland, OR 97204–1390, *http://www.deq.state.or.us/*.

(ii) Lane Regional Air Pollution Authority (LRAPA), 1010 Main Street, Springfield, Oregon 97477, *http://www.lrapa.org*.

(iii) See paragraph (c)(10) of this section for a table indicating the delegation status of National Emission Standards for Hazardous Air Pollutants for Region 10—Alaska, Idaho, Oregon, and Washington.

(iv)–(vii) [Reserved]

* * * * *

(WW) State of Washington. (i) Washington State Department of Ecology (Ecology), P.O. Box 47600, Olympia, WA 98504–7600, *http://www.ecy.wa.gov/*.

(ii) Benton Clean Air Authority (BCAA), 650 George Washington Way, Richland, WA 99352–4289, *http://www.bcaa.net/*.

(iii) Northwest Air Pollution Control Authority (NWAPA), 1600 South Second St., Mount Vernon, WA 98273–5202, *http://www.nwair.org/*.

(iv) Olympic Air Pollution Control Authority (OAPCA), 909 Sleater-Kinney Road S.E., Suite 1, Lacey, WA 98503–1128, *http://www.oapca.org/*.

(v) Puget Sound Clean Air Agency (PSCAA), 110 Union Street, Suite 500, Seattle, WA 98101–2038, *http://www.pscleanair.org/*.

(vi) Spokane County Air Pollution Control Authority (SCAPCA), West 1101 College, Suite 403, Spokane, WA 9920, *http://www.scapca.org/*.

(vii) Southwest Clean Air Agency (SWCAA), 1308 NE 134th St., Vancouver, WA 98685–2747, *http://www.swcleanair.org/*.

(viii) Yakima Regional Clean Air Agency (YRCAA), Larson Building, Suite 1016, 6 South 2nd St., Yakima WA 98901, *http://co.yakima.wa.us/cleanair/default.htm*.

(ix) See paragraph (c)(10) of this section for a table indicating the delegation status of National Emission Standards for Hazardous Air Pollutants for Region 10—Alaska, Idaho, Oregon, and Washington.

* * * * *

(c) * * *

(10) The following table lists the delegation status of specific Part 61 Subparts that have been delegated unchanged to state and local air pollution control agencies in Region 10. An ''X'' indicates the subpart has been delegated, subject to all the conditions and limitations set forth in federal law, regulations, policy, guidance, and determinations. Some authorities cannot be delegated and are retained by EPA. These include certain General Provisions authorities and specific parts of some standards. The dates noted at the end of this table indicate the effective dates of federal rules that have been delegated. Any amendments made to these rules after this effective date are not delegated.

DELEGATION STATUS FOR PART 61 STANDARDS—REGION 10 [1]

40 CFR Part 61, Subparts [2]	ADEC [3]	IDEQ [4]	ODEQ [5]	LRAPA [6]	Ecology [7]	BCAA [8]	NWAPA [9]	OAPCA [10]	PSCAA [11]	SCAPCA [12]	SWAPCA [13]	YRCAA [14]
A General Provisions [15]	X	[4] X			X	X	X	X	X	X	X	X
B Radon from Underground Uranium Mines.												
C Beryllium		[4] X			X	X	X	X	X	X	X	X
D Beryllium Rocket Motor Firing		[4] X			X	X	X	X	X	X		
E Mercury	X	[4] X			X	X	X	X	X	X	X	X
F Vinyl Chloride		[4] X			X	X	X	X	X	X	X	X
H Emissions of Radionuclides other than Radon from Dept of Energy facilities.												
I Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H.												
J Equipment Leaks of Benzene	X	[4] X			X	X	X	X	X	X	X	X
K Radionuclides from Elemental Phosphorus Plants.												
L Benzene from Coke Recovery		[4] X			X	X	X	X	X	X	X	X
M Asbestos	[3] X	[4] X			[7] X	[8] X	X	[10] X	X	X	X	X
N Arsenic from Glass Plants		[4] X			X	X	X	X	X	X	X	X
O Arsenic from Primary Copper Smelters		[4] X			X	X	X	X	X	X	X	X
P Arsenic from Arsenic Production Facilities		[4] X			X	X	X	X	X	X	X	X
Q Radon from Dept of Energy facilities.												
R Radon from Phosphogypsum Stacks.												
T Radon from Disposal of Uranium Mill Tailings.		[4] X										
V Equipment Leaks	X	[4] X			X	X	X	X	X	X	X	X
W Radon from Operating Mill Tailings.												
Y Benzene from Benzene Storage Vessels	X	[4] X			X	X	X	X	X	X	X	X
BB Benzene from Benzene Transfer Operations.		[4] X			X	X	X	X	X	X	X	X
FF Benzene Waste Operations	X				X	X	X	X	X	X	X	X

[1] Table last updated on April 15, 2002.

[2] Any authority within any Subpart of this Part that is identified as not delegatable, is not delegated.

[3] Alaska Department of Environmental Conservation (01/18/1997). Note: Alaska received delegation for § 61.145 and § 61.154 of Subpart M (Asbestos), along with other sections and appendices which are referenced in § 61.145, as § 61.145 applies to sources required to obtain an operating permit under Alaska's regulations. Alaska has not received delegation for Subpart M for sources not required to obtain an operating permit under Alaska's regulations.

[4] Idaho Department of Environmental Quality (07/01/2000). Note: Delegation of these 40 CFR Part 61, Subparts applies only to those sources in Idaho required to obtain an operating permit under Title V of the Clean Air Act.

[5] Oregon Department of Environmental Quality.

[6] Lane Regional Air Pollution Authority.

[7] Washington Department of Ecology (02/20/2001). Note: Delegation of 40 CFR Part 63, Subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act, including Hanford. (Pursuant to RCW 70.105.240, only Ecology can enforce regulations at Hanford).

[8] Benton Clean Air Authority (02/20/2001). Note: Delegation of 40 CFR Part 63, Subpart M excludes Hanford, see footnote 7.

[9] Northwest Air Pollution Authority (07/01/2000).

[10] Olympic Air Pollution Control Authority (07/01/2000). Note: Delegation of 40 CFR Part 63, Subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act.

[11] Puget Sound Clean Air Agency (07/01/2001).

[12] Spokane County Air Pollution Control Authority (02/20/2001).

[13] Southwest Air Pollution Control Authority (08/01/1998).

[14] Yakima Regional Clean Air Authority (07/01/2000).

[15] General Provisions Authorities which are not delegated include approval of major alternatives to test methods, approval of major alternatives to monitoring, and any sections in the subparts pertaining to approval of alternative standards (*i.e.,* alternative means of emission limitations). For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see 40 CFR 63.90.

PART 63—[AMENDED]

1. The authority citation for Part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by revising (a)(47)(i) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(47) Washington. (i) The following table lists the delegation status of specific part 63 Subparts that have been delegated to state and local air pollution control agencies in Washington. An ''X'' indicates the subpart has been delegated, subject to all the conditions and limitations set forth in Federal law, regulations, policy, guidance, and determinations. Some authorities cannot be delegated and are retained by EPA. These include certain General Provisions authorities and specific parts of some standards. The dates noted at the end of this table indicate the effective dates of Federal rules that have been delegated. Any amendments made to these rules after this effective date are not delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF WASHINGTON [1]

40 CFR Part 63, Subparts [2]	Ecology [3]	BCAA [4]	NWAPA [5]	OAPCA [6]	PSCAA [7]	SCAPCA [8]	SWCAA [9]	YRCAA [10]
A General Provisions [11]	X	X	X	X	X	X	X	X
D Early Reductions	X	X	X	X	X	X	X	X
F HON-SOCMI	X	X	X	X	X	X	X	X
G HON-Process Vents	X	X	X	X	X	X	X	X
H HON-Equipment Leaks	X	X	X	X	X	X	X	X
I HON-Negotiated Leaks	X	X	X	X	X	X	X	X
L Coke Oven Batteries	X	X	X	X	X	X	X	X
M Perchloroethylene Dry Cleaning	X[3]	X[4]	X		X[7]	X[8]	X	X[10]
N Chromium Electroplating	X	X	X	X	X	X	X	X
O Ethylene Oxide Sterilizers	X	X	X	X	X	X	X	X
Q Industrial Process Cooling Towers	X	X	X	X	X	X	X	X
R Gasoline Distribution	X	X	X	X	X	X	X	X
S Pulp and Paper [12]	X		[5]	X[6]	X[7]	X[8]	X[9]	X[10]
T Halogenated Solvent Cleaning	X	X	X	X	X	X	X	X
U Polymers and Resins I	X	X	X	X	X	X	X	X
W Polymers and Resins II–Epoxy	X	X	X	X	X	X	X	X
X Secondary Lead Smelting	X	X	X	X	X	X	X	X
Y Marine Tank Vessel Loading	X	X	X		X	X	X	
AA Phosphoric Acid Manufacturing Plants	X	X	X	X	X	X		X
BB Phosphate Fertilizers Production Plants	X	X	X	X	X	X		X
CC Petroleum Refineries	X	X	X	X	X	X	X	X
DD Off-Site Waste and Recovery	X	X	X	X	X	X	X	X
EE Magnetic Tape Manufacturing	X	X	X	X	X	X	X	X
GG Aerospace Manufacturing & Rework	X	X	X	X	X	X	X	X
HH Oil and Natural Gas Production Facilities	X	X	X	X	X	X		X
II Shipbuilding and Ship Repair	X	X	X	X	X	X	X	X
JJ Wood Furniture Manufacturing Operations	X	X	X	X	X	X	X	X
KK Printing and Publishing Industry	X	X	X	X	X	X	X	X
LL Primary Aluminum [13]	X							
MM Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills [14].	X							
OO Tanks—Level 1	X	X	X	X	X	X		X
PP Containers	X	X	X	X	X	X		X
QQ Surface Impoundments	X	X	X	X	X	X		X
RR Individual Drain Systems	X	X	X	X	X	X		X
SS Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or Process.	X	X	X	X	X	X		X
TT Equipment Leaks—Control Level 1	X	X	X	X	X	X		X
UU Equipment Leaks—Control Level 2	X	X	X	X	X	X		X
VV Oil-Water Separators and Organic-Water Separators.	X	X	X	X	X	X		X
WW Storage Vessels (Tanks)—Control Level 2	X	X	X		X	X		
YY Source Categories: Generic MACT	X	X	X		X	X		
CCC Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants.	X	X	X		X	X		
DDD Mineral Wool Production	X	X	X		X	X		
EEE Hazardous Waste Combustors	X	X	X		X	X		
GGG Pharmaceuticals Production	X	X	X		X	X		
HHH Natural Gas Transmission and Storage Facilities.	X	X	X		X	X		
III Flexible Polyurethane Foam Production	X	X	X		X	X		X
JJJ Polymers and Resins IV	X	X	X		X	X	X	
LLL Portland Cement Manufacturing	X	X	X		X	X		
MMM Pesticide Active Ingredient Production	X	X	X		X	X		
NNN Wool Fiberglass Manufacturing	X	X	X		X	X		
OOO Manufacture of Amino Phenolic Resins	X	X	X		X	X		
PPP Polyether Polyols Production	X	X	X		X	X		

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF WASHINGTON [1]—Continued

40 CFR Part 63, Subparts [2]	Ecology [3]	BCAA [4]	NWAPA [5]	OAPCA [6]	PSCAA [7]	SCAPCA [8]	SWCAA [9]	YRCAA [10]
RRR Secondary Aluminum Production	X	X			X	X		
TTT Primary Lead Smelting	X	X	X		X	X		
VVV Publicly Owned Treatment Works	X	X	X		X	X		
XXX Ferroalloys Production: Ferromanganese & Silicomanganese.	X	X	X		X	X		
CCCC Manufacture of Nutritional Yeast					X			
GGGG Extraction of Vegetable Oil					X			
VVVV Boat Manufacturing.								

[1] Table last updated on April 15, 2002. See 40 CFR 61.04(b)(WW) for agency addresses.
[2] Any authority within any subpart of this part that is identified as not delegatable, is not delegated.
[3] Washington State Department of Ecology (03/13/2001 for MM, 02/20/2001 for all others). Note: delegation of subpart M applies only to those sources required to obtain an operating permit under Title V of the Clean Air Act.
[4] Benton Clean Air Agency (02/20/2001). Note: delegation of subpart M applies only to those sources required to obtain an operating permit under Title V of the Clean Air Act.
[5] Northwest Air Pollution Control Agency (07/01/2000). Note: delegation of subpart S applies to all applicable facilities and processes except Kraft and Sulfite Pulping Mills (see footnote 12).
[6] Olympic Air Pollution Control Agency (07/01/2000). Note: delegation of subpart M applies only to those sources required to obtain an operating permit under Title V of the Clean Air Act; delegation of subpart S applies to all applicable facilities and processes except Kraft and Sulfite Pulping Mills (see footnote 12).
[7] Puget Sound Clean Air Agency (07/01/2001). Note: delegation of subpart S applies to all applicable facilities and processes exept Kraft and Sulfite Pulping Mills (see footnote 12). For information about delegation of subpart M, see paragraph (a)(47)(ii) of this section.
[8] Spokane County Air Pollution Control Agency (02/20/2001). Note: delegation of subpart M applies only to those sources required to obtain an operating permit under Title V of the Clean Air Act; delegation of subpart S applies to all applicable facilities and processes except Kraft and Sulfite Pulping Mills (see footnote 12).
[9] Southwest Clean Air Agency (08/01/1998). Note: delegation of subpart S applies to all applicable facilities and processes except Kraft and Sulfite Pulping Mills (see footnote 12).
[10] Yakima Regional Clean Air Authority (07/01/2000). Note: delegation of subpart M applies only to those sources required to obtain an operating permit under Title V of the Clean Air Act; delegation of subpart S applies to all applicable facilities and processes except Kraft and Sulfite Pulping Mills (see footnote 12).
[11] General Provisions Authorities which are not delegated include approval of major alternatives to test methods, approval of major alternatives to monitoring, and any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations). For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see § 63.90.
[12] Subpart S of this part as it pertains to Kraft and Sulfite Pulping Mills cannot be delegated to any local agencies in Washington. The Washington State Department of Ecology retains sole authority to regulate Kraft and Sulfite Pulping Mills, pursuant to Washington State Administrative Code 173–405–012 and 173–410–012.
[13] Subpart LL of this part cannot be delegated to any local agencies in Washington because the Washington State Department of Ecology retains sole authority to regulate Primary Aluminum Plants, pursuant to Washington Administrative Code 173–415–010.
[14] Subpart MM of this part cannot be delegated to any local agencies in Washington because the Washington State Department of Ecology retains sole authority to regulate Kraft and Sulfite Pulping Mills, pursuant to Washington State Administrative Code 173–405–012 and 173–410–012.

* * * * *

[FR Doc. 02–5603 Filed 3–13–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7156–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deletion for the White Bridge Road property of the Asbestos Dump Superfund site from the National Priorities List; correction.

SUMMARY: The Environmental Protection Agency (EPA) published a document in the **Federal Register** of February 8, 2002 (67 FR 5955), announcing the deletion of the White Bridge Road property of the Asbestos Dump Superfund site from the National Priorities List. The document contained an error regarding a reference to a table of appendix B of 40 CFR part 300. This document corrects the reference to ''Table 2'' to read ''Table 1''.

DATES: Effective on March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Kim O'Connell, (212) 637–4399; e-mail: *oconnell.kim@epa.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 8, 2002, in FR Doc. 02–3098, under the ''PART 300—[AMENDED]'' caption, make the following correction:

PART 300—[CORRECTED]

Appendix B—[Corrected]

On page 5955, in the second column, correct amendatory instruction 2 to read as follows:

2. Table 1 of appendix B to part 300 is amended by adding a ''P'' in the Notes column in the entry for Asbestos Dump, Millington, New Jersey.

Dated: February 25, 2002.

William J. Muszynski,

Deputy Regional Administrator, Region II.

[FR Doc. 02–5864 Filed 3–13–02; 8:45 am]
BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–3 and 102–84

[FPMR Amendment D–98]

RIN 3090–AG55

Annual Real Property Inventories

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is adopting as final without change an interim rule which revised the Federal Property Management Regulations (FPMR) by moving coverage on the annual real property inventories into the Federal Management Regulation (FMR). A cross-reference was added to the FPMR to

direct readers to the coverage in the FMR. The FMR coverage was written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: This final rule becomes effective March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, 202–501–1737.

SUPPLEMENTARY INFORMATION:

A. Background

In furtherance of its leadership role in real property asset management, the Office of Governmentwide Policy, Office of Real Property, conducted a comprehensive review of the policies contained in Federal Property Management Regulations (FPMR) Part 101–3 (41 CFR part 101–3), entitled ''Annual Real Property Inventories.'' This review was based on a collaborative effort with Federal real property holding agencies that utilize the Worldwide Inventory of Federal Real Property.

Representatives from the Department of the Interior, the Department of Energy, and the Army Corps of Engineers participated with GSA in conducting the initial steps of the comprehensive review of the policies in FPMR part 101–3 (41 CFR part 101–3). The review focused on improvements to make the real property inventory program more useful and to enable Federal agencies to more effectively manage their real property inventories. In addition, we have rewritten these regulations in plain language format. These regulations are being transferred from the FPMR to the FMR to enable the Government to better focus on implementing statutory requirements, Executive Orders, and governmentwide policies rather than on detailed operating procedures.

An interim rule was published in the **Federal Register** on November 2, 2001 (66 FR 55593). No comments were received in response to the interim rule.

B. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule will 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 because it applies solely to matters concerning agency management and personnel.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–3 and 102–84

Federal buildings and facilities, Government property management.

Interim Rule Adopted as Final Without Change

For the reasons set forth in the preamble and under the authority of 40 U.S.C. 486(c), the interim rule revising 41 CFR part 101–3 and adding 41 CFR part 102–84 which was published in the **Federal Register** at 66 FR 55593 on November 2, 2001, is adopted as a final rule without change.

Dated: February 28, 2002.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02–5775 Filed 3–13–02; 8:45 am]

BILLING CODE 6820–23–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[WT Docket No. 01–32; FCC 02–09]

Implementation of Competitive Bidding Rules to License Certain Rural Service Areas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (''the Commission''), pursuant to the Balanced Budget Act of 1997, takes action to grant initial licenses for certain areas of the country for cellular service by allowing all eligible parties to apply for initial licenses, licensing markets based on rural service areas (RSAs) under part 22 of its rules, and using its part 1 competitive bidding rules to auction these licenses.

DATES: Effective April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Katherine M. Harris at (202) 418–0609 (Wireless Telecommunications Bureau).

SUPPLEMENTARY INFORMATION: This is a summary of the Report and Order (''R&O'') in WT Docket No. 01–32, FCC 02–9, adopted January 16, 2002 and released January 28, 2002. The complete text is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC and also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW, Room CY–B402, Washington, DC 20554. The document is also available via the Internet at *http://www.fcc.gov/Bureaus/Wireless/Orders/2001/fcc02-9.pdf.*

Paperwork Reduction Act

1. The R&O contains no proposed information collection.

Synopsis of the Report and Order

2. In the *Notice of Proposed Rule Making* in this proceeding (*NPRM*), 66 FR 14104 (March 9, 2001), the Commission proposed rules for awarding licenses for four cellular Rural Service Areas (RSAs) that remain unlicensed because the initial lottery winner was disqualified or has otherwise withdrawn its application.

3. There are currently four cellular RSA markets that remain unlicensed because the initial lottery winner was disqualified. These markets are: 332A—Polk, AR; 582A—Barnes, ND; 672A—Chambers, TX ; and 727A—Ceiba, PR. Three additional markets (370A—Monroe, FL; 492A—Goodhue, MN; and 615A—Bradford, PA) were the subject of recent Congressional action in which the Commission was directed to reinstate the original lottery winner in each of the three markets to tentative selectee status and proceed with processing the selectee's application for authority to operate. *See* District of Columbia Appropriations Act of FY 2001, Public Law 106–553, Title X, 1007, 114 Stat. 2762, Launching Our Communities' Access to Local Television Act of 2000 (2000) (D.C. Appropriations Act of FY 2001); *Public Notice,* Wireless Telecommunications Bureau Grants Rural Cellular Licenses, 16 FCC Rcd 5601 (2001) (not published in the **Federal Register**), recon. denied, In the Matter of Applications of Great Western Cellular Partners, L.L.C., Monroe Telephone Services, L.L.C., and Futurewave Partners, L.L.C., *Memorandum Opinion and Order,* DA 01–2443 (CWD rel. Oct. 19, 2001) (application for review pending). Under

the Balanced Budget Act of 1997 (1997 Budget Act), the Commission is now required, with certain exceptions not applicable here, to resolve mutually exclusive applications for initial licenses by competitive bidding. *See* Balanced Budget Act of 1997, Public Law 105–33, 3002(a), 111 Stat. 251, 258–60 (1997); 1997 Budget Act, Section 3002(a)(1)(A), *codified* at 47 U.S.C. 309(j)(1), (2); 1997 Budget Act, Section 3002(a)(2)(B), *codified* at 47 U.S.C. 309(i)(5). Based on the record compiled in this proceeding the Commission has decided to implement the proposals put forth in the *NPRM,* namely, to: (1) Allow all eligible parties to apply for these initial licenses; (2) license these markets on an RSA basis under our part 22 rules; and (3) use our part 1 competitive bidding rules to auction these licenses.

Background

4. The Commission has been awarding cellular licenses since 1982. Under the original cellular licensing rules, one of the two cellular channel blocks in each market (the B block) was awarded to a local wireline carrier, while the other block (the A block) was awarded competitively to a carrier other than a local wireline incumbent. After awarding the first thirty Metropolitan Statistical Area (MSA) licenses pursuant to comparative hearing rules, the Commission adopted rules in a 1984 *Report and Order,* 49 FR 23628 (June 7, 1984), and a 1986 *First Report and Order,* 51 FR 26895 (July 28, 1986), to award the remaining cellular MSA and RSA licenses through lotteries. On January 31, 2001, the Commission adopted a *Notice of Proposed Rulemaking,* 66 FR 14101 (March 9, 2001), acknowledging that in four RSA markets no initial licensee had been granted.

5. In the Omnibus Budget Reconciliation Act of 1993 (1993 Budget Act), Congress added Section 309(j) to the Communications Act, authorizing the Commission to resolve mutually exclusive applications for use of the electromagnetic spectrum by auction. Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, Title VI, 6002(a), 107 Stat. 312, 387–92 (1993). In addition, Section 6002(e) of the 1993 Budget Act provided that: ''[t]he Federal Communications Commission shall not issue any license or permit [by lottery] after the date of enactment of this Act unless . . . one or more applications for such license were accepted for filing by the Commission before July 26, 1993.'' This provision left to the Commission's discretion whether to use auctions or lotteries for applications filed before July 26, 1993. Beginning in 1994, the Commission, in a *Memorandum Opinion and Order,* 59 FR 37163 (July 21, 1994), exercised its discretion and used lotteries, rather than auctions, to resolve already-pending mutually exclusive applications for cellular unserved areas filed prior to July 26, 1993.

6. On August 5, 1997, the 1997 Budget Act was signed into law, modifying the Commission's auction authority by amending Section 309(j) of the Communications Act to require that all mutually exclusive applications for initial licenses or construction permits be auctioned, with certain exceptions not applicable here. 1997 Budget Act, Public Law 105–33, 3002(a), 111 Stat. 251, 258–60 (1997) (amending 47 U.S.C. 309(j)). The 1997 Budget Act expressly repealed Section 6002(e) of the 1993 Budget Act, *id.* at 3002(a)(4), and terminated the Commission's authority to award licenses through random selection, even in the case of applications filed prior to July 26, 1993, except for licenses for noncommercial educational and public broadcast stations, *id.* at 3002(a)(2)(B). The Commission had found in the *Competitive Bidding Second Report and Order* that mutually exclusive applications for initial licenses to provide cellular service were auctionable under the auction authority provided by the 1993 Budget Act. Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Report and Order,* 59 FR 22980 (May 4, 1994), (*Competitive Bidding Second Report and Order*). Because the 1997 Budget Act terminated the Commission's remaining lottery authority, the Bureau dismissed all pending RSA lottery applications. *See* In the Matter of Certain Cellular Rural Service Area Applications, *Order,* 14 FCC Rcd 4619 (WTB 1999) (not published in the **Federal Register**) (dismissing applications in RSAs 332A (Polk, AR), 370A (Monroe, FL), 492A (Goodhue, MN), 582A (Barnes, ND), 615A (Bradford, PA), and 727A (Ceiba, PR)); In the Matter of Certain Cellular Rural Service Area Applications in Market Nos. 599A and 672A, *Order,* DA 99–814 (CWD rel. Apr. 29, 1999) (dismissing applications in RSAs 599A (Nowata, OK) and 672A (Chambers, TX)); In the Matter of Certain Rural Service Area Applications in Market Nos. 599A and 672A, *Order on Reconsideration,* DA 99–1426 (CWD rel. July 21, 1999) (reinstating applications of tentative selectees in those markets—Zephyr Tele-Link in RSA 599A and Alee in RSA 672A); In the Matter of Zephyr Tele-Link Application for a Construction Permit to Establish a Cellular System Operating on Frequency Block A in the Domestic Public Cellular Radio Telecommunications Service To Serve the Oklahoma 4-Nowata Rural Service Area, Market No. 599A, *Order* 15 RCC Rcd 4247 (CWD 2000) (granting application of Zephyr Tele-Link); In the Matter of Application of Alee Cellular Communications for Authorization to Construct Nonwireline Cellular System in Texas RSA 21 Market 672, *Memorandum Opinion and Order,* 15 FCC Rcd 2831(2000) (not published in the **Federal Register**) (recon. pending) (dismissing application of Alee) (*Alee Cellular*). Several of the applicants sought reconsideration of the Bureau's dismissal of the RSA applicants, and the Bureau declined to reconsider its actions. In the Matter of Certain Cellular Rural Service Area Applications, *Order,* 16 FCC Rcd 4619 (WTB 2001) (not published in the **Federal Register**) (affirming dismissals) (*March 2, 2001 Order*). Ranger Cellular and Miller Communications, Inc. have sought further reconsideration of the Bureau's dismissal of the applications, and High Tower Communications, Inc. has sought Commission review of the Bureau's action. Consolidated Petition for Reconsideration of Ranger Cellular and Miller Communications, Inc. (filed Mar. 30, 2001); Application for Review of High Tower Communications, Inc. (filed Apr. 2, 2001).

7. In the first dismissal order cited above, the Bureau also dismissed as moot CCPR's Petition requesting that we award licenses for the remaining RSA markets through competitive bidding. CCPR's Petition specifically requested that market 727A—Ceibo, Puerto Rico, be awarded through competitive bidding rather than through a second lottery. However, the CCPR Petition raised certain issues concerning the broader applicability of the use of competitive bidding for all markets where an initial lottery was held and the winner was disqualified. The Commission therefore treated the CCPR Petition as a petition for rulemaking and requested comment on awarding cellular licenses through competitive bidding for all remaining unlicensed RSAs. Although the Commission dismissed CCPR's Petition as moot because we are required by the 1997 Budget Act to award licenses through competitive bidding, we have considered, and are incorporating into the record of this proceeding, all comments and reply comments submitted in response to the CCPR Petition.

8. The four markets for which no initial license has been granted are:

332A—Polk, AR; 582A—Barnes, ND; 727A—Ceiba, PR; and 672A—Chambers, TX. These four markets are the subject of this *Report and Order.*

A. Need for and Objectives of the Report and Order

9. Congress enacted the Balanced Budget Act of 1997, which requires the Commission to resolve mutually exclusive applications for initial licenses through competitive bidding instead of random selection, with certain exceptions not applicable here. Accordingly, the Commission initiated this rulemaking in order to adopt rules for the granting of initial cellular RSA authorizations by means of competitive bidding. The Commission's objective in this rulemaking proceeding is to establish, for cellular RSA markets for which a tentative selectee has been disqualified, the applicable competitive bidding and licensing rules. Such rules are necessary in order to determine the classes of eligible entities as well as determine what policies, if any, should be adopted to promote participation by small business entities, consistent with the Commission's statutory obligation under Section 309 of the Communications Act of 1934, as amended, 47 U.S.C. 309.

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

10. No comments were submitted specifically in response to the IRFA. Some of the comments responding to the proposals contained in the *NPRM,* however, discussed issues that could affect small businesses. Two of the three commenters that addressed eligibility for the four cellular RSA licenses at issue generally supported permitting all eligible entities to apply for the licenses. *See Report and Order* at ¶¶ 8–21. The third commenter opposed such open eligibility (which would encompass small businesses), instead arguing that only entities that had filed lottery applications for these licenses in 1988 and 1989 *and* had appealed the dismissal of their lottery applications should be permitted to apply for these licenses (which would mean only three entities would be potentially eligible). *See Report and Order* at ¶¶ 8–21.

11. One commenter supported the proposals contained in the *NPRM* to provide bidding credits to small businesses to encourage them to bid on and win the cellular RSA licenses. *See Report and Order* at ¶¶ 27–33. Another commenter opposed adoption of such bidding credits on the basis that such credits would unfairly and uneconomically skew the auction in favor of smaller entities. *See Report and Order* at ¶¶ 27–33.

12. Regarding eligibility for the four cellular RSA licenses, the Commission determined in the *Report and Order,* that any entity otherwise qualified under the rules would be permitted to apply for any of the four RSA licenses. *See Report and Order* at ¶¶ 8–21. As explained in greater detail in the *Report and Order* and in Section E *infra,* the Commission concluded that permitting broad-based eligibility would best further the public interest as well as facilitate participation by small businesses.

13. Regarding the adoption of bidding credits for certain categories of small businesses, the Commission concluded that including such bidding credits as part of the cellular RSA application and bidding process would help to promote opportunities for small businesses. *See Report and Order* at ¶¶ 27–33. As explained in greater detail in the *Report and Order* and Section E *infra,* implementation of bidding credits facilitates the ability of small businesses to compete against larger entities and promotes economic opportunities for those small businesses.

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

14. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. *See* 5 U.S.C. 603(b)(3). The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisidiction.'' *Id.* 601(6). The term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act. *Id.* 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA at 15 U.S.C. 632.

15. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration). ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' 5 U.S.C. 601(5). As of 1992, there were approximately 85,006 such jurisdictions in the United States. 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimate that 81,600 (91 percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992.

16. According to recent telecommunications industry revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Services (PCS), which are placed together in that data. Trends in Telephone Service, Table 19.3 (March 2000). This data does not indicate how many of these 808 carriers fall within each of the revenue tiers defined by the Commission for the purpose of receiving bidding credits as some form of small business or entrepreneur. *See Report and Order* at ¶¶ 29–33. As described in the *Report and Order* and Section E *infra,* the Commission defined an ''entrepreneur'' as an entity with average annual gross revenues not exceeding $40 million for the preceding three years and provided a 15 percent bidding credit; a ''small business'' as an entity with average annual gross revenues not exceeding $15 million for the preceding three years and provided a 25 percent bidding credit; and a ''very small business'' as an entity with average annual gross revenues not exceeding $3 million for the preceding three years and provided a 35 percent bidding credit.

17. The Commission is required to estimate in this FRFA the number of small entities to which any new rules would apply, provide a description of such entities, and assess the impact of the rule on such entities. The rules adopted in the *Report and Order* will

apply to all entities that seek to obtain the subject licenses, including small entities. The number of entities that may apply to participate in these future auctions is unknown. Moreover, these entities might already be providers of cellular service or PCS or other wireless services, or they may have no current involvement in the wireless industry. To the extent that existing cellular or PCS operators would apply for the subject authorizations, the applicable NAICS code is 513322. Existing paging carriers, which might also be interested in these authorizations, fall under NAICS code 513321. Resellers of paging and cellular services are identified by NAICS code 51333.

18. The number of small businesses that have participated in prior auctions has varied. Small businesses, as defined under the Commission's rules in the context of various auctions for authorizations in specific services, have accounted for 1,667 out of a total of 2,096 qualified bidders in all prior auctions, not including broadcast auctions. As provided in Section 1.2110(c)(1) of the Commission's rules, and in conformity with the Small Business Act and the regulations of the Small Business Administration, the Commission establishes small business definitions for purposes of its auctions on a service-specific basis. *See* 47 CFR 1.2110(c)(1); 15 U.S.C. 632(c)(2)(c); 13 CFR 121.902(b). Statistics for broadcast license auctions are not available, and would be less relevant to the licenses at issue here. Given these statistics, the Commission expects a large percentage of participants in our auctions program generally to be small businesses in the future, although this may not be the case in this individual auction.

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

19. The Commission imposes no new reporting, recordkeeping, or other compliance requirements in the *Report and Order.* The only projected reporting and recordkeeping requirements that will apply in any auctions for the four cellular RSA authorizations are those that are already established by Commission regulations. Nothing in this rulemaking changes those regulations. The Commission will accept new license applications and use our general Part 1 competitive bidding rules to conduct the auction. These rules require all applicants to electronically submit FCC Form 175 in order to participate in the auction and, at the conclusion of the auction, all high bidders to electronically submit FCC Form 601 to apply for a license. *See* 47 CFR 1.2105(a), 1.2107(a). The purposes of these forms are to ensure that applicants are eligible to participate in the auction and that high bidders are eligible to hold the cellular RSA licenses at issue. The Office of Management and Budget has already approved both of these forms. FCC Form 175, OMB Control No. 3060–0600 (effective until Apr. 30, 2004); FCC Form 601, OMB Control No. 3060–0798 (effective until Mar. 31, 2002). In addition, under our Part 1 rules, any entity wishing to receive a bidding credit for serving qualifying tribal lands must comply with 47 CFR 1.2110(f)(3), an obligation also approved by the Office of Management and Budget. *See* 47 CFR 1.2110(f)(3).

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

20. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c)(1)-(4).

21. In the *Report and Order,* the Commission adopts rules to permit us to grant initial licenses in four cellular RSAs. In adopting these rules, the Commission considered the potential significant economic impact of the rules on small entities. Specifically, the Commission considered the impact of its eligibility definition on the ability of small businesses even to apply for the licenses at issue in this proceeding and to participate in the associated auctions. The Commission also considered the effect of the proposed bidding credits for three categories of small businesses on the ability of small businesses to compete successfully in the auctions and to build out a system should such businesses be awarded any of the licenses. As described in the *Report and Order* and Section E *infra*, the Commission defined an ''entrepreneur'' as an entity with average annual gross revenues not exceeding $40 million for the preceding three years and provided a 15 percent bidding credit; a ''small business'' as an entity with average annual gross revenues not exceeding $15 million for the preceding three years and provided a 25 percent bidding credit; and a ''very small business'' as an entity with average annual gross revenues not exceeding $3 million for the preceding three years and provided a 35 percent bidding credit.

22. Also, in proposing to apply the Commission's existing Part 1 competitive bidding rules to any auctions for these licenses, the Commission took into account their effect on small businesses.

23. The rules adopted by the *Report and Order* will affect all small entities that seek to acquire any of the four cellular RSA licenses discussed herein. The Commission believes that permitting all eligible entities to apply for the four licenses—instead of restricting eligibility to three applicants that filed lottery applications in 1988 and 1989—will promote opportunities for participation by small businesses. A greater number of small businesses will have the chance to seek the authorizations at issue.

24. The Commission has sought to promote small business ownership by defining three tiers of small businesses for the purposes of providing bidding credits to small entities: an ''entrepreneur'' is an entity with average annual gross revenues not exceeding $40 million for the preceding three years; a ''small business'' is an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and a ''very small business'' is an entity with average annual gross revenues not exceeding $3 million for the preceding three years. The Small Business Administration approved these proposed small business definitions on January 30, 2001. *See* Letter from Fred P. Hochberg, Acting Administrator, Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated Jan. 30, 2001 (*SBA Letter*). *See also* Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Gary M. Jackson, Assistant Administrator, Small Business Administration, dated Sept. 21, 2001. The bidding credits are 15 percent for entrepreneurs, 25 percent for small businesses, and 35 percent for very small businesses. The Commission specifically rejected arguments in opposition to the use of bidding credits for small businesses. As explained in the *Report and Order*, adoption of bidding credits for small businesses provides them with an opportunity to compete successfully against larger, well-financed bidders. *Report and Order*

at ¶ 32. The Commission believes the bidding credits it has adopted will benefit a range of small businesses.

25. The Commission will apply its Part 1 competitive bidding rules equally to all applicants for the licenses, including small businesses. Our Part 1 competitive bidding rules have been designed to ensure that small businesses are not placed at a disadvantage and have a full and fair opportunity to compete in fair auction proceedings. While these rules require small businesses to submit application forms in order to participate in the auctions for the subject licenses, the Commission believes that equitably applying the same rules to all entities helps to promote fairness in the process and to ensure that the auction is effective. Fair and effective auction proceedings benefit small businesses as well as all other participants.

I. Discussion

A. Eligibility for Licenses

26. *Background.* In the *NPRM,* the Commission proposed to allow all eligible entities to participate in an auction for the four cellular RSA licenses at issue in this proceeding. The Commission noted that the competitive bidding program seeks to award each license to the applicant that values it most highly and that is, therefore, most likely to offer valued service to the public. The Commission explained that excluding potential applicants that were not previously lottery applicants would be inconsistent with that goal. The Commission also recognized that, because nearly twelve years have passed since the closing of the original RSA filing window, a number of commenters that have expressed interest in participating in RSA auctions would not have had the opportunity to file applications, while some applicants that did file lottery applications may no longer exist. Finally, the Commission reasoned that, to the extent former lottery applicants continue to have an interest in applying for these markets, open eligibility allows them to do so.

27. In each of the four unlicensed RSAs, the Commission has granted interim operating authority to one or more cellular operators to provide cellular service on the Channel A block pending the ultimate permanent licensing of these RSAs. The Commission also specifically proposed to permit cellular operators that have been granted interim operating authority (IOA) in the four unlicensed RSAs to participate in the RSA auction. The Commission noted that although IOAs confer no interest or expectation of receiving a cellular license, IOA holders might have a substantial interest in bidding for permanent authorizations in markets where they may have been providing interim cellular service.

28. *Discussion.* After careful consideration, the Commission concludes that it is in the public interest to allow all entities, including current IOA holders and former lottery applicants, to participate in the RSA auction. In recent years, the Commission has generally favored open eligibility because the Commission believes that maximizing the pool of auction applicants helps to ensure that licenses are awarded to entities that value them most highly and are, therefore, most likely to offer prompt service to the public. *See, e.g., Competitive Bidding Second Report and Order*, 59 FR 22980 (May 4, 1994); Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 37.0–38.6 GHz and 38.6–40.0 GHz, *Report and Order and Second Notice of Proposed Rulemaking*, 12 FCC Rcd 18600, 18617–20, ¶¶ 30–35 (1997) (not published in the **Federal Register**); Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz, *Report and Order*, 15 FCC Rcd 22709, 22736–37, ¶¶ 54–56 (2000) (*BBA Report and Order*) (not published in the **Federal Register**). *But see, e.g., BBA Report and Order*, 15 FCC Rcd at 22737, ¶ 56 (not published in the **Federal Register**) (the Commission has authority to restrict eligibility in particular cases if such restrictions are consistent with our spectrum management responsibilities under Section 309(j)). The Commission has found that this approach to auction participation best fulfills the public interest objectives set forth in Section 309(j)(3) of the Communications Act. 47 U.S.C. 309(j)(3)(A)–(D). Further, the Commission does not believe that there are any compelling reasons to exclude potential participants in the upcoming RSA auction.

29. A number of commenters support open eligibility, particularly current IOA holders and entities that did not previously file lottery applications. With respect to eligibility, two of the four commenters that responded to the *Notice* support open eligibility. In addition, several commenters that responded to the CCPR Petition favored open eligibility. Cingular argues that permitting open eligibility will ensure that licenses are awarded to applicants that value them the most highly. Cingular specifically insists that the Commission allow IOA holders in the subject markets to apply for licenses. ALLTEL also supports the Commission's proposal to permit open eligibility. BANM asserts that open eligibility will expedite cellular service to the RSA markets. WWC urges the Commission to give all interested applicants an opportunity to provide cellular service in the RSAs. Century contends that the number of potential service providers has increased in the years since the closing of the original RSA filing window and that broadening auction participation would permit the best qualified and most highly motivated entities to compete.

30. Several commenters oppose open eligibility. Some of these commenters, such as Ranger and Miller, seek to restrict eligibility to former lottery applicants who continue to contest dismissal of their applications. One commenter responding to the *Notice* contends that the auction should be restricted to former lottery applicants. Commenters in response to the *CCPR Petition* also argue that the Commission should limit the auction to former lottery applicants. Other commenters argue that IOA holders should be barred from participating in the cellular RSA auction. These commenters generally contend that it is the Commission's policy, when it grants a party's application for IOA service, to dismiss that party's pending application for permanent authority for the subject market. AALA claims that an IOA holder would have an advantage over other applicants in an auction because it would have a ''unique ability'' to calculate the value of the license. In contrast, BANM and CCPR argue that the Commission's policy for excluding IOAs was implemented to avoid unfair advantage in the comparative hearing process and thus is not relevant when licenses are assigned by competitive bidding.

31. Several commenters cite to *Ashbacker Radio Corp.* v. *FCC*, 326 U.S. 327 (1945). See, e.g., AALA Comments at 14 (to allow one applicant to operate in a market under temporary authority poses a severe threat to the principles set forth in *Ashbacker*). We note that short-form applications to participate in competitive bidding are governed by Section 309(j), and not the procedural requirements of Sections 309(a), 309(b), or 309(e), or the *Ashbacker* doctrine, which requires a comparative hearing when competing applicants file conflicting license or construction

permit applications for the same authorization. See Elleron Oil Co. and WVI Partners, Inc. Petition for Reconsideration of Dismissal of Short-Form Applications for Interactive Video and Data Service Auction, *Order*, 13 FCC Rcd 17246, 17251–52, ¶ 9 (WTB 1998) (not published in the **Federal Register**). Section 309(j) does not require the Commission to use a notice and cut-off procedure or establish ''cut-off dates'' to invite mutually exclusive applications for a particular license. *See id*. at 17250, ¶ 8.

32. In determining eligibility for auction participation, the Commission is required by Section 309(j)(3) to promote certain public interest objectives. Those objectives include rapid deployment of new technologies and services to the public, promotion of economic opportunity and competition, recovery for the public of a portion of the value of the spectrum, and efficient and intensive use of the spectrum. 47 U.S.C. 309(j)(3)(A)–(D). The Commission believes that a policy of unrestricted eligibility in the RSA auction will best fulfill our public interest goals. Here, open eligibility has a higher probability of promoting the rapid delivery of services to the public than limited eligibility. This is because open eligibility increases the likelihood that all entities who have an interest in putting the license to use will participate in the auction. Among these, the bidder who is willing to pay the most will be highly motivated to rapidly put the license to a use that the public finds valuable because only such a use will make its investment worthwhile. Importantly, no commenter has presented evidence in this case that there are entities with market power whose participation might allow them to limit or reduce competition by their entry. In such a situation, permitting as many qualified bidders as possible allows competition and economic opportunity to flourish by reducing one barrier to market entry, potentially resulting in a more competitive applicant pool. In the absence of evidence of market failure, the market, and not regulation, should determine participation in competitive bidding here, and the Commission should allow the maximum number and types of bidders to participate in the auctions.

33. An important factor in our decision to permit open eligibility is that the licenses at issue in this proceeding will cover rural areas. Under Section 309(j)(4)(B), the Commission is required to encourage the rapid deployment of services specifically to rural areas. 47 U.S.C. 309(j)(4)(B). BANM also highlights the need for the provision of service in rural markets, stating that, ''[w]hile many urban markets have enjoyed cellular service for as long as thirteen years, these rural service areas have remained without a permanent nonwireline cellular licensee.'' The Commission believes that open eligibility will encourage participation in the RSA auction by entities that are most likely to be interested in, and capable of, serving rural areas.

34. Our decision to permit open eligibility in the RSA auction includes the participation of current IOA holders in the four unlicensed RSAs. The Commission's policy to dismiss applications for permanent status filed by IOA holders originated in the context of comparative hearings, based on the concern that the decision to grant a license in a comparative hearing would be biased in favor of an IOA holder because it had incurred substantial expenses in its temporary operations. *See* In re Applications of La Star Cellular Telephone Co. and New Orleans CGSA, Inc, *Memorandum Opinion and Order*, 4 FCC Rcd 3777 (1989) (not published in the **Federal Register**), *aff'd*, 899 F.2d 1233 (D.C. Cir 1990). *See Community Broadcasting Co.* v. *FCC*, 274 F.2d 753 (D.C. Cir. 1960) (an interim operator's expenditure of sizeable funds on its temporary operation would inevitably influence the Commission's final decision, no matter how much the Commission tried to eliminate this factor). The Commission declines to extend that policy to the competitive bidding process. IOA holders will not have an advantage over other bidders as they once had over other applicants in comparative hearings because, in an auction, licenses are assigned to the highest bidder, regardless of prior operating status. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *Memorandum Opinion and Order*, 14 FCC Rcd 8724, 8737–39, ¶¶ 23–26 (1999) (not published in the **Federal Register**) (the Commission rejected arguments that holders of interim authority have a comparative advantage in an auction process). As the Commission stated in the *NPRM*, although IOAs confer no entitlement to, or expectation of, receiving a cellular license, IOA holders may have a substantial interest in bidding for permanent authorizations in markets where they have been providing interim cellular service. Given our previously adopted policies and the record in this proceeding, the Commission concludes that current IOA holders should not be excluded from participating in the auction of licenses for the unlicensed RSAs on an equal basis with other applicants.

35. Joint commenters Ranger and Miller raise a variety of statutory and equitable arguments against open eligibility, none of which the Commission find persuasive. First, Ranger and Miller argue that Section 309(l) of the Communications Act of 1934, as amended, restricts eligibility for cellular radio licenses to lottery applicants that filed their applications prior to July 1997 and whose applications allegedly are ''unresolved.'' Section 309(l) provides in pertinent part that, with respect to competing applications for initial licenses for ''commercial radio and television stations'' that were filed with the Commission before July 1, 1997, the Commission shall treat the persons filing such applications as the only persons eligible to be qualified bidders. Public Law 105–33, 3002(a)(3), 111 Stat. 251, 260 (1997) (codified at 47 U.S.C. 309(l)). Ranger and Miller contend that the Commission's rules define cellular radio as a ''commercial mobile radio service'' and that, therefore, the reference to ''commercial radio'' in Section 309(l) includes cellular radio. Cingular disagrees with Ranger and Miller, asserting that the Commission should not view ''commercial radio'' and ''television stations'' as distinct, unrelated terms. Cingular maintains that the term ''commercial'' was intended to exclude *noncommercial educational radio and television* applications from the scope of Section 309(l) and from competitive bidding under Section 309(j)(2)(C).

36. The Commission agrees with Cingular's interpretation of the statutory language, which is plain on its face. The statute does not use ''commercial radio'' and ''television stations'' as distinct terms. Rather, the reference in the statute to ''commercial radio and television stations'' clearly refers to broadcast facilities. Where Congress has referred to wireless services like cellular in other provisions of the Communications Act of 1934, as amended, it has clearly used the term ''commercial mobile services.'' *See, e.g.*, 47 U.S.C. 253(e), 274(i)(2)(B), 332(c)(1), 332(d)(1). As the Supreme Court has explained, ''[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'' *Russello* v. *United States*,

464 U.S. 16, 23 (1983) (internal quotation marks omitted), citing *United States* v. *Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972). The legislative history also confirms that Section 309(l) applies only to commercial broadcast radio and television applications. The Conference Report specifically states that ''[n]ew section 309(l) of the Communications Act requires the Commission to use competitive bidding to resolve any mutually exclusive applications for *radio or television broadcast licenses* that were filed with the Commission prior to July 1, 1997.'' H.R. Conf. Rep. No. 217, 105th Cong., 1st Sess. at 573 (1997) (*Conference Report*) (emphasis added). The Commission has applied Section 309(l) only to pending comparative broadcast licensing cases. *See* Implementation of Section 309(j) of the Communications Act '' Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *First Report and Order*, 63 FR 48615 (Sept. 30, 1998) (*Broadcast First Report and Order*); recon. denied, 14 FCC Rcd 8724 (1999) (not published in the **Federal Register**); modified, 14 FCC Rcd 12541 (1999) (not published in the **Federal Register**); *See* In the Matter of Amendment of Section 73.202(B), FM Table of Allotments, FM Broadcast Stations, *Memorandum Opinion and Order*, 16 FCC Rcd 2272 (2001) (not published in the **Federal Register**).

37. Contrary to the claim of Ranger and Miller, *Bachow Communications, Inc.* v. *FCC* does not support the notion that Section 309(l) applies to cellular RSA applications as well as broadcast license applications. *Bachow Communications, Inc.* v. *FCC*, 237 F.3d 683 (D.C. Cir. 2001) (*Bachow*). *Bachow's* central holding instead is that license applications for 39 GHz service filed under a comparative hearing licensing scheme could be dismissed when the Commission shifted to an auction licensing scheme. *Bachow*, 237 F.3d at 686–688 (recognizing the ''Commission's authority to change license assignment allocation (*sic*) procedures midstream'' even though it disrupts expectations and alters the competitive balance among applicants). Ranger and Miller also cite the D.C. Circuit's opinion in *McElroy* to support their argument that the Commission cannot make the RSA licenses available to new applicants. *McElroy Electronics Corp.* v. *FCC*, 86 F.3d 248 (D.C. Cir. 1996) (*McElroy*). *McElroy* holds that when the Commission decides to process timely-filed applications, it generally may not also process competing applications filed out of time. *McElroy*, 86 F.3d at 253–259. Because we will permit open eligibility for the subject licenses, and all applications to participate in the auction will be newly filed, the *McElroy* decision is inapposite.

38. Ranger and Miller also offer up a litany of equitable arguments that they contend support artificially limiting eligibility. They argue that the Commission should limit the RSA applicant pool because the number of unresolved lottery applicants is small, the applications have been pending for thirteen years, the service rules for RSA licenses have not changed, and the lottery applicants did not have notice when they filed their applications that competitive bidding, rather than lotteries, might be used to assigned licenses. In addition, Ranger and Miller oppose open eligibility on the grounds that the Commission did not refund their lottery application filing fees, and that open eligibility will lead to delay and litigation.

39. Ranger and Miller fail to show how the public interest would be served by limiting the RSA auction to only three former lottery applicants. In fact, it is well-established that, regardless of when an application is filed, an applicant has no vested right to a continuation of the licensing procedures in effect at the time its application was filed. *See, e.g., Bachow*, 237 F.3d at 687–688; Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development of Paging Systems, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 64 FR 33762 (June 24, 1999); *Broadcast First Report and Order*, 13 FCC Rcd at 15937, ¶ 44 (not published in the **Federal Register**); Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, *Third Order on Reconsideration*, 13 FCC Rcd 4856, 4941, ¶ 195 (1998) (not published in the **Federal Register**), citing *Chadmoore Communications, Inc.* v. *FCC*, 113 F.3d 235, 240–41 (D.C. Cir. 1997). Moreover, there is no logical nexus between the length of time the applications were pending and the rationale for restricting eligibility to bid in the RSA auction. Similarly, the claim that the lottery applicants did not have any notice of possible rule changes at the time they filed their applications provides no reasonable rationale for the proposed narrowing of eligibility. The Commission's action declining to refund application filing fees neither gives the applications continued ''life'' nor justifies restrictions on eligibility. Finally, the Commission necessarily is guided by the public interest objectives set forth in Section 309(j)(3)(A)–(D) in setting application eligibility and not by concerns over the prospects of litigation and appeals. 47 U.S.C. 309(j)(3)(A)–(D).

40. Ranger and Miller Comments at 9, 12–13. Ranger and Miller argue that the Commission should restrict eligibility because Miller helped the Commission determine that a cellular RSA licensee was unqualified to hold a RSA license. Ranger and Miller Comments at 10–12. We disagree. Any action by Miller that may have led the Commission to such a determination is irrelevant to our decision whether we should, as a general rule, adopt open eligibility with respect to the four cellular RSA markets. We are obligated to promote the public interest, not individual applicants.

41. Ranger and Miller totally disregard the equities of other parties potentially interested in seeking the subject authorizations, as well as equitable considerations relevant to the public interest. As the Commission found above, adopting open eligibility—the antithesis of the licensing plan promoted by Ranger and Miller—for these licenses has a greater probability than limited eligibility of resulting in the rapid deployment of new technologies and services to the public, the possibility of competition and economic opportunity, and the efficient and intensive use of the spectrum. Such a result would promote the public interest, and therefore, open eligibility is warranted. In addition, it is important to recognize that there may be parties interested in providing cellular service in these markets, and qualified to do so, that did not even exist at the time the lottery applications were filed.

42. Finally, Ranger and Miller argue that an open eligibility policy in this context must necessarily be based on the potential for increased revenue to the Treasury. Section 309(j)(7)(B) does not preclude the Commission from adopting eligibility rules based on other considerations, even though such rules may also result in increased federal revenues. The purpose of open eligibility is not to maximize the amount of revenues raised in an auction but to ensure that licenses are awarded to those that value them most highly and that, therefore, will be most likely to provide rapid and efficient service to the public. Indeed, by asserting that auction revenues will be greater if they are forced to compete with a larger number of bidders, Ranger and Miller may be suggesting that they value the RSA licenses less highly than their potential competitors. Our determination to permit open eligibility in the RSA auction is based on our statutory obligations to promote

competition and rapid deployment of services to rural areas, not to enhance the Federal Treasury.

B. Market Areas To Be Auctioned

43. *Background.* In the *NPRM,* the Commission sought comment on whether the markets for which licenses are to be awarded through competitive bidding should be based on RSAs, or whether alternative licensing models should be considered. The Commission received two comments that supported licensing the markets on an RSA basis, and no party expressed opposition to that proposal.

44. *Discussion.* The Commission concludes that the remaining unlicensed cellular RSA markets should be licensed on an RSA basis under our Part 22 rules. As the Commission observed in the *NPRM,* the initial lotteries for the unlicensed markets were for RSAs as defined in 47 CFR 22.909 of our rules. To employ another market model for these RSAs would be potentially disruptive to adjacent cellular operations, as well as possibly impede the cost-effective buildout of facilities to serve the residents of these areas as well as transient users. The Commission also will, pursuant to 47 CFR 22.947, subject licenses awarded for these markets to the same construction and operational rules as licenses granted to prior RSA lottery winners, including the exclusive right of the auction winner to expand its system within that market for a period of five years. After the expiration of the five-year expansion period, any areas within the RSA that remained unserved would be available for licensing pursuant to 47 CFR 22.949 of our rules which governs unserved areas Phase I and Phase II filing procedures.

C. Competitive Bidding Procedures

1. Incorporation by Reference of Part 1 Standardized Auction Rules

45. *Background.* In the *Part 1 Third Report and Order,* the Commission streamlined its auction procedures by adopting general competitive bidding rules set forth in Part 1, Subpart Q, of the Commission's rules applicable to all auctionable services. Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, *Third Report and Order and Second Further Notice of Proposed Rule Making,* 62 FR 13540 (March 21, 1997) (modified by Erratum, DA 98–419 (rel. March 2, 1998)) *(Part 1 Third Report and Order).* The Commission clarified and amended these general competitive bidding procedures. Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making,* 65 FR 52323 (Aug. 29, 2000) (modified by Erratum, DA 00–2475, 65 FR 52401 (rel. Aug. 29, 2000)) *(Part 1 Order on Reconsideration)* (recons. pending). More recently, the Commission adopted modifications to Section 1.2105(c) of the Commission's rules, the competitive bidding ''anti-collusion rule.'' Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, WT Docket No. 97–82, *Seventh Report and Order,* 66 FR 54447 (Oct. 29, 2001). *See also* 47 CFR 1.2101 *et seq.* In the *NPRM*, the Commission proposed to conduct the auction of cellular RSA licenses in conformity with the general competitive bidding rules, including any amendments adopted in the *Part 1 Order on Reconsideration, Fifth Report and Order, and Fourth FNPRM,* 65 FR 52323 (August 29, 2000) proceeding. Specifically, the Commission proposed to employ the Part 1 rules governing competitive bidding design, designated entities, application and payment procedures, reporting requirements, collusion issues, and unjust enrichment. The Commission further stated that winning bidders would be eligible to obtain a bidding credit for serving qualifying tribal lands. *See* 47 CFR 1.2110(f)(3). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit after winning the auction when it files its long-form application. In this regard, we note that only one RSA subject to these proposals—RSA 582A-Barnes, ND—contains any federally recognized tribal lands. Finally, the *NPRM* contemplated that auction-related procedural matters such as the appropriate competitive bidding design for the RSA auction, as well as minimum opening bids and reserve prices, would be determined by the Bureau pursuant to its delegated authority prior to the start of the cellular RSA auction. *See* 47 CFR 0.131(c), 0.331, and 0.332; *see also* Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making,* 62 FR 13540 (March 21, 1997).

46. *Discussion.* The Commission adopts the proposal to conduct the auction for initial licenses in the four cellular RSAs in conformity with the general competitive bidding rules set forth in Part 1, Subpart Q, of the Commission's rules. The Commission believes that this decision to conduct the RSA auction in conformity with the standardized Part 1 rules will increase the efficiency of the competitive bidding process and provide specific guidance to auction participants.

47. Although the Commission received few comments on this issue, none of the commenters opposed the application of the general competitive bidding rules. One commenter, Cingular, favors application of the general competitive bidding rules to the RSA auction. In its comments, Cingular also requests that the bidding design ultimately selected not include combinatorial bidding, (Combinatorial bidding design allows for bids on combinations or packages of licenses.) arguing that it is inappropriate where no ''synergies'' exist among the markets in question. As indicated in the *NPRM*, the Bureau will seek comment by Public Notice on auction-related procedural issues, including the appropriate competitive bidding design, prior to the start of the cellular RSA auction. This approach will provide the Bureau with an opportunity to weigh the benefits and disadvantages of combinatorial bidding design, among other auction-specific issues.

2. Small Business Definitions and Bidding Credits

48. *Background.* In the *NPRM,* the Commission proposed to adopt special provisions for small businesses that participate in the auction for cellular RSA licenses. The Commission noted that the markets at issue could attract a wide range of entities and the adoption of bidding credits will help us meet our Congressional mandate to promote competition and to disseminate licenses among a wide variety of applicants. Accordingly, the Commission proposed to define an entrepreneur as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, a small business as an entity with average annual gross revenues for the preceding three years not exceeding $15 million, and a very small business as an entity with average annual gross revenues for the preceding three years not exceeding $3 million. The entrepreneur and small business definitions are consistent with the small business definitions we established for the broadband Personal Communications Services C and F blocks. We also proposed the definition of very small business for the RSA

auction because smaller businesses may be interested in acquiring licenses to provide service in these markets. The Small Business Administration approved these proposed small business definitions on January 30, 2001. *See SBA Letter.* The Commission further proposed, as provided in Section 1.2110(f)(2) of our rules, to offer entrepreneurs a bidding credit of 15 percent, small businesses a bidding credit of 25 percent, and very small businesses a bidding credit of 35 percent.

49. The Commission sought comment on whether the characteristics and capital requirements of cellular service call for a different approach. The Commission also asked commenters, to the extent that they propose additional provisions to ensure participation by businesses owned by minorities and women, to address how such provisions should be crafted to meet the relevant standards of judicial review.

50. *Discussion.* As the Commission tentatively concluded in the *NPRM,* it will adopt the following small business definitions and bidding credits: (1) An ''entrepreneur'' with average annual gross revenues for the preceding three years not exceeding $40 million will be eligible for a 15 percent bidding credit; (2) a ''small business'' with average annual gross revenues for the preceding three years not exceeding $15 million will be eligible for a 25 percent bidding credit; and (3) a ''very small business'' with average annual gross revenues for the preceding three years not exceeding $3 million will be eligible for a 35 percent bidding credit.

51. The Commission is not persuaded that large carriers are necessarily better suited to provide cellular RSA service. In any case, the Commission does not prescreen applicants' relative qualifications. Further, the Commission believes that competition between large and small entities will benefit subscribers in the rural markets. Also, the Commission is not persuaded that the adoption of bidding credits will, in any way, impede service to these areas. To the extent that, as ALLTEL suggests, cellular service is a national ''mature'' service dominated by large carriers, our decision to adopt bidding credits should help eliminate barriers to entry for small businesses, consistent with our statutory mandate. *See* 47 U.S.C. 309(j)(3)(B).

52. Finally, ALLTEL contends that the auction will be skewed toward smaller entities that receive an overly generous bidding credit, which will distort market valuation. While the Commission agrees that bidding credits provide small businesses with an advantage, Congress, in Section 309(j), specifically directed the Commission to promote economic opportunities for small businesses. The Commission further notes that bidding credits alone do not guarantee success; rather, they provide small businesses with an opportunity to successfully compete against larger, well-financed bidders. *See* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Report and Order and Further Notice of Proposed Rulemaking,* 62 FR 11616 (March 12, 1997). Because bidding credits are the best tool the Commission has to promote these opportunities, the Commission concludes that it is appropriate to adopt the special provisions for small businesses.

53. The Commission does adopt special preferences for entities owned by minorities or women. As the Commission did not receive any comments on this issue, the Commission does not have an adequate record to support such special provisions under the current standards of judicial review. *See Adarand Constructors* v. *Peña,* 515 U.S. 200 (1995) (requiring a strict scrutiny standard of review for Congressionally mandated race-conscious measures); *United States* v. *Virginia,* 518 U.S. 515 (1996) (applying an intermediate standard of review to a state program based on gender classification). The Commission believes the bidding credits adopted here for small businesses will further our objective of disseminating licenses among a wide variety of applicants. Furthermore, minority and women-owned entities that qualify as small businesses may take advantage of the special provisions.

D. Disposition of Alee's Argument Concerning Texas 21

54. In its comments, Alee has requested that RSA 672A (Texas 21—Chambers) not be included in any upcoming auction pending the outcome of its petition for reconsideration of an order denying its application in that market. For the reasons stated below, the Commission denies Alee's request and includes the Texas 21 RSA authorization among the markets to be subject to auction rules.

55. Alee requests that, if the Commission includes the Texas 21 authorization in the contemplated auction, the Commission gives notice to any potential bidder that any license won in that market would be subject to Alee's claim. If Alee ultimately prevails in the hearing process, the license will be awarded accordingly. If Alee does not prevail, then the Commission will have the necessary licensing rules and policies in place for the Texas 21 authorization without having to conduct another rulemaking proceeding. The Commission will ensure that interested parties are fully informed to the extent that Alee's claim remains unresolved.

E. IOA Operations

56. *Background.* Under the terms of each of the existing IOAs, the IOA operator must cease operations immediately upon initiation of service by the new licensee, provided that the new licensee gives at least 30 days written notice of its intent to provide service. The IOA condition specifically provides that ''[t]he interim operator must fully cooperate with the permanent licensee in effectuating a smooth transition to the provision of service in the market by the permanent licensee without *disruption* of service to the public. The interim operator must cease operations in the market on the date of initiation of permanent service or within 30 days of written notice by the permanent permittee to the interim operator of the day and time that it intends to initiate service, whichever date occurs later.'' In order to prevent unnecessary interruption of service to existing cellular customers, the Commission proposed in the *NPRM* that, in the event that any of the current IOA holders do not obtain the RSA license for their markets, they should be allowed to continue providing service on a temporary basis subject to these conditions, *i.e.,* until the auction winner provides the required notice and is prepared to commence service. Minimizing such interruptions while the auction winner establishes its service will also help to retain 911 access in the IOA service area. Cingular requests that the Commission clarify its rules to provide that interim operators may continue to operate until the auction winner is prepared to commence service in that particular part of the market where the IOA holder is operating in order to avoid disruption in service to the public.

57. *Discussion.* Because of the nature of these markets and carrier buildout practices, the Commission anticipates the auction winner will not initially provide coverage throughout the entire market. As a result, the auction winner may or may not initiate service in the area where the public currently is receiving service from the IOA holder. The Commission will require the IOA holder to ''pull back'' its service area boundaries (SAB) to eliminate any overlap with the auction winner's own

SAB, and to terminate service in the RSA upon notice from the auction winner that the latter is extending coverage into the area served under the IOA. The Commission feels that this will best serve the public interest by preventing localized disruptions in service during the transition period.

II. Final Regulatory Flexibility Analysis

A. Procedural Matters

1. Final Regulatory Flexibility Analysis

58. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* in this docket. *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. The comments received are discussed above. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

59. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603, the Final Regulatory Flexibility Analysis (FRFA) is set forth above. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

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

B. Ordering Clauses

61. Pursuant to 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 309(j), Part 22, 47 CFR *is Amended* as specified in the rule changes and the auctions for Markets 322A—Polk, AR, 592A—Barnes, ND, 727A—Ceiba, PR, and 672A—Chambers, TX be conducted under Part 1, Subpart Q of the Commission's rules, 47 CFR 1.2101 *et seq.,* and that all eligible parties be permitted to participate in the bidding.

62. The rules and policies adopted in this Report and Order shall become effective April 15, 2002.

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

List of Subjects in 47 CFR Part 22

Rural areas.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

For the reasons discussed in the preamble, part 22 of title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICES

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

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

2. Section 22.228 is added to Subpart B to read as follows:

§ 22.228 Cellular rural service area licenses subject to competitive bidding.

Mutually exclusive initial applications for Cellular Rural Service Area licenses are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this part.

3. Section 22.229 is added to Subpart B to read as follows:

§ 22.229 Designated entities.

(a) *Eligibility for small business provisions.* (1) A very small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.

(3) An entrepreneur is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $40 million for the preceding three years.

(4) A consortium of very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section. A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(2) of this section. A consortium of entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(3) of this section.

(5) For purposes of determining whether an entity meets any of the definitions set forth in paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered in the manner set forth in § 1.2110(b) and (c) of this chapter.

(b) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

4. Section 22.969 is added to Subpart H to read as follows:

§ 22.969 Cellular RSA licenses subject to competitive bidding.

Mutually exclusive applications for initial authorization for the following Cellular Rural Service Areas filed after the effective date of this rule are subject to competitive bidding procedures as prescribed by Sections 22.228 and 22.229: 332A—Polk, AR; 582A—Barnes, ND; 672A—Chambers, TX; and 727A—Ceiba, PR.

[FR Doc. 02–6110 Filed 3–13–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252 and Appendix I to Chapter 2

[DFARS Case 2001–D006]

Defense Federal Acquisition Regulation Supplement; DoD Pilot Mentor-Protege Program

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 807 of the National Defense Authorization Act for Fiscal Year 2001. Section 807 adds women-owned small businesses to the types of concerns that may participate as protege firms in the DoD Pilot Mentor-Protege Program.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–0350. Please cite DFARS Case 2001–D006.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements Section 807 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). Section 807 adds women-owned small businesses to the types of concerns that may participate as protege firms in the DoD Pilot Mentor-Protege Program. This rule also clarifies that business concerns owned and controlled by an Indian tribe or a Native Hawaiian organization are eligible to participate as protege firms in the Program.

DoD published an interim rule at 66 FR 47108 on September 11, 2001. DoD received one comment on the interim rule. The comment did not recommend any change to the rule. Therefore, DoD is converting the interim rule to a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis. Interested parties may obtain a copy of the analysis from the point of contact specified herein. The analysis is summarized as follows: This rule permits women-owned small businesses to participate as protege firms in the DoD Pilot Mentor-Protege Program. The objective of the rule is to provide an opportunity for women-owned small businesses to enhance their capabilities and increase their participation in Government and commercial contracts. Presently, there are 3,471 women-owned small business concerns that do business with DoD. Since the inception of the Mentor-Protege Program, 160 mentor firms and 509 protege firms have participated in the Program. Each protege firm must provide annual data to its mentor firm, for submission to the Government, regarding the progress of the protege firm in employment, revenues, and participation in DoD contracts. DoD received no comments in response to the initial regulatory flexibility analysis.

C. Paperwork Reduction Act

The information collection requirements of the DoD Pilot Mentor-Protege Program have been approved by the Office of Management and Budget under Control Number 0704–0332, for use through March 31, 2004.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 219 and 252 and Appendix I to Chapter 2, which was published at 66 FR 47108 on September 11, 2001, is adopted as a final rule without change.

[FR Doc. 02–5950 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

[DFARS Case 2001–D016]

Defense Federal Acquisition Regulation Supplement; Partnership Agreement Between DoD and the Small Business Administration

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a partnership agreement between DoD and the Small Business Administration (SBA). The partnership agreement streamlines procedures for contract awards under SBA's 8(a) Program.

DATES: Effective date: March 14, 2002.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before May 13, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite DFARS Case 2001–D016 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Angelena Moy, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2001–D016.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, (703) 602–1302.

SUPPLEMENTARY INFORMATION:

A. Background

A partnership agreement between DoD and SBA, dated February 1, 2002, permits DoD to award 8(a) contracts directly to 8(a) concerns, on behalf of SBA. The partnership agreement replaced a memorandum of understanding, which also permitted direct award of 8(a) contracts, and which was implemented in DFARS Subpart 219.8. This interim rule amends DFARS Subpart 219.8 to reflect the provisions of the new partnership agreement. The amendments include the following:

1. Emphasis that SBA remains the prime contractor on all 8(a) contracts, continues to determine eligibility of concerns for contract award, and retains appeal rights under Section 19.810 of the Federal Acquisition Regulation. SBA delegates to DoD only the authority to sign contacts on its behalf.

2. For negotiated acquisitions, authorization for the contracting officer to submit a request for an eligibility determination on all firms in the competitive range if discussions are to be conducted, or on all firms with a realistic chance of award if no discussions are to be conducted. Previously, the contracting officer

submitted eligibility determinations on no more than three of the most highly rated offerors.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to 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, *et seq.*, because the rule affects only the administrative procedures used for award of contracts under the 8(a) Program. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001–D016.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements a partnership agreement between DoD and SBA. The agreement streamlines procedures for awards under SBA's 8(a) Program by authorizing DoD to award contracts directly to 8(a) concerns. The partnership agreement became effective on February 1, 2002. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 219 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 219 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

2. Section 219.800 is revised to read as follows:

219.800 General.

(a) By Partnership Agreement (PA) dated February 1, 2002, between the Small Business Administration (SBA) and the Department of Defense (DoD), the SBA delegated to the Under Secretary of Defense (Acquisition, Technology, and Logistics) its authority under paragraph 8(a)(1)(A) of the Small Business Act (15 U.S.C. 637(a)) to enter into 8(a) prime contracts, and its authority under 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. However, the SBA remains the prime contractor on all 8(a) contracts, continues to determine eligibility of concerns for contract award, and retains appeal rights under FAR 19.810. The SBA delegates only the authority to sign contracts on its behalf. Consistent with the provisions of this subpart, this authority is hereby redelegated to DoD contracting officers within the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia, to the extent that it is consistent with any dollar or other restrictions established in individual warrants. This authority expires on September 30, 2004.

(b) Contracts awarded under the PA may be awarded directly to the 8(a) participant on either a sole source or competitive basis. An SBA signature on the contract is not required.

(c) Notwithstanding the PA, the contracting officer may elect to award a contract pursuant to the provisions of FAR Subpart 19.8.

3. Section 219.804–2 is revised to read as follows:

219.804–2 Agency offering.

(1) For requirements processed under the PA cited in 219.800 (but see paragraph (2) of this subsection for procedures related to purchase orders that do not exceed the simplified acquisition threshold), the notification to the SBA must clearly indicate that the requirement is being processed under the PA. All notifications should be submitted in writing, using facsimile or electronic mail, when possible, and must specify that—

(i) Under the PA, an SBA acceptance or rejection of the offering is required within 5 working days of receipt of the offering; and

(ii)(A) For sole source requirements, an SBA acceptance must include a size verification and a determination of the 8(a) firm's program eligibility, and, upon acceptance, the contracting officer will solicit a proposal, conduct negotiations, and make award directly to the 8(a) firm; or

(B) For competitive requirements, upon acceptance, the contracting officer will solicit offers, conduct source selection, and, upon receipt of an eligibility verification, award a contract directly to the selected 8(a) firm.

(2) Under the PA cited in 219.800, no separate agency offering or SBA acceptance is needed for requirements that are issued under purchase orders that do not exceed the simplified acquisition threshold. After an 8(a) contractor has been identified, the contracting officer must establish the prices, terms, and conditions with the 8(a) contractor and must prepare a purchase order consistent with the procedures in Part 213 and FAR Part 13, including the applicable clauses required by this subpart. No later than the day that the purchase order is provided to the 8(a) contractor, the contracting officer must provide to the cognizant SBA Business Opportunity Specialist, using facsimile, electronic mail, or any other means acceptable to the SBA district office—

(i) A copy of the signed purchase order; and

(ii) A notice stating that the purchase order is being processed under the PA. The notice also must indicate that the 8(a) contractor will be deemed eligible for award and will automatically begin work under the purchase order unless, within 2 working days after SBA's receipt of the purchase order, the 8(a) contractor and the contracting officer are notified that the 8(a) contractor is ineligible for award.

(3) The notification to SBA must identify any joint venture proposed for performance of the contract. SBA must approve a joint venture before award of an 8(a) contract involving the joint venture.

(4) For competitive requirements for construction to be performed overseas, submit the notification to SBA Headquarters.

219.804–3 [Amended]

4. Section 219.804–3 is amended by removing ''MOU'' and adding in its place ''PA''.

5. Section 219.805–2 is amended by revising paragraph (c) introductory text and paragraph (c)(ii) to read as follows:

219.805–2 Procedures.

(c) For requirements processed under the PA cited in 219.800—

* * * * *

(ii) For negotiated acquisitions, the contracting officer may submit a request for an eligibility determination on all firms in the competitive range if discussions are to be conducted, or on all firms with a realistic chance of award if no discussions are to be conducted.

219.806 [Amended]

6. Section 219.806 is amended as follows:

a. In the introductory text, by removing ''MOU'' and adding in its place ''PA'';

b. In paragraph (1), by removing ''shall'' and adding in its place ''must''; and

c. In paragraph (2), in the last sentence, by removing ''shall'' and adding in its place ''must''.

219.808–1 [Amended]

7. Section 219.808–1 is amended in the introductory text by removing ''MOU'' and adding in its place ''PA''.

219.811–1 [Amended]

8. Section 219.811–1 is amended as follows:

a. In paragraph (a), in the first sentence, by removing ''MOU'' and adding in its place ''PA'' and by removing ''shall'' and adding in its place ''must'';

b. In paragraph (a), in the second and last sentences by removing ''shall'' and adding in its place ''must''; and

c. In paragraph (b) introductory text, by removing ''MOU'' and adding in its place ''PA''.

219.811–2 [Amended]

9. Section 219.811–2 is amended by removing ''MOU'' and adding in its place ''PA'' and by removing ''shall'' and adding in its place ''must''.

219.811–3 [Amended]

10. Section 219.811–3 is amended in paragraphs (1) and (2) by removing ''MOU'' and adding in its place ''PA''.

219.812 [Amended]

11. Section 219.812 is amended in paragraph (d), in the first sentence, by removing ''MOU'' and adding in its place ''PA''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 252.219–7009 is amended by revising the clause date, paragraph (a), and paragraph (c) introductory text to read as follows:

252.219–7009 Section 8(a) direct award.

As prescribed in 219.811–3(1), use the following clause:

Section 8(a) Direct Award (Mar 2002)

(a) This contract is issued as a direct award between the contracting office and the 8(a) Contractor pursuant to the Partnership Agreement dated February 1, 2002, between the Small Business Administration (SBA) and the Department of Defense. Accordingly, the SBA, even if not identified in Section A of this contract, is the prime contractor and retains responsibility for 8(a) certification, for 8(a) eligibility determinations and related issues, and for providing counseling and assistance to the 8(a) Contractor under the 8(a) Program. The cognizant SBA district office is:

_____

_____

_____

_____

[*To be completed by the Contracting Officer at the time of award*]

* * * * *

(c) The 8(a) Contractor agrees that—

* * * * *

[FR Doc. 02–5952 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2002–D006]

Defense Federal Acquisition Regulation Supplement; Restriction on Acquisition of Vessel Propellers

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify that the statutory restriction on acquisition of vessel propellers from foreign sources applies only to DoD contracts that use fiscal year 2000 or 2001 funds.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002-D006.

SUPPLEMENTARY INFORMATION:

A. Background

The restriction on acquisition of vessel propellers at DFARS 225.7020 implements Section 8064 of the DoD Appropriations Act for Fiscal Year 2001 (Public Law 106–259). Section 8064 provides that no funds appropriated in fiscal year 2000 or 2001 may be used for the procurement of vessel propellers other than those produced by a domestic source and of domestic origin. The DoD Appropriations Act for Fiscal Year 2002 (Public Law 107–117) contains no such provision. Therefore, this final rule amends DFARS 225.7020 to clarify that the restriction applies only to DoD contracts that use fiscal year 2000 or 2001 funds.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2002-D006.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 225 is amended as follows:

1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7020–4 is amended by revising the introductory text to read as follows:

225.7020–4 Contract clause.

Use the clause at 252.225–7023, Restriction on Acquisition of Vessel Propellers, in solicitations and contracts that use fiscal year 2000 or 2001 funds

for the acquisition of vessels or vessel propellers, unless—

* * * * *

[FR Doc. 02–5949 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 226

[DFARS Case 2001–D007]

Defense Federal Acquisition Regulation Supplement; Preference for Local 8(a) Contractors—Base Closure or Realignment

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify policy pertaining to preferences for local businesses in acquisitions that support a base closure or realignment. The rule clarifies that both competitive and noncompetitive acquisitions under the Section 8(a) Program are permitted if an eligible 8(a) contractor is located in the vicinity of the base to be closed or realigned.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–0350. Please cite DFARS Case 2001–D007.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 226.7103 to clarify policy pertaining to preferences for local businesses in acquisitions that support a base closure or realignment. The present policy permits award under the Section 8(a) Program if ''the 8(a) contractor'' is located in the vicinity of the base to be closed or realigned. This rule amends the text to permit use of 8(a) procedures if ''at least one eligible 8(a) contractor'' is located in the vicinity. This change clarifies the intent of the policy, which is to permit both competitive and noncompetitive 8(a) acquisitions in support of a base closure or realignment. A similar clarifying amendment is made to the text pertaining to set-asides for small business concerns.

DoD published a proposed rule at 66 FR 47158 on September 11, 2001. DoD received no comments on the proposed rule. Therefore, DoD is adopting the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will 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, *et seq.*, because the rule merely clarifies existing policy pertaining to acquisitions made in support of a base closure or realignment.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 226

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 226 is amended as follows:

1. The authority citation for 48 CFR Part 226 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

2. Section 226.7103 is amended by revising paragraph (c) to read as follows:

226.7103 Procedure.

* * * * *

(c) If offers can be expected from business concerns in the vicinity—

(1) Consider section 8(a) only if at least one eligible 8(a) contractor is located in the vicinity.

(2) Set aside the acquisition for small business only if at least one of the expected offers is from a small business located in the vicinity.

[FR Doc. 02–5951 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR part 237

[DFARS Case 2001–D018]

Defense Federal Acquisition Regulation Supplement; Performance of Security Functions

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1010 of the USA Patriot Act. Section 1010 provides an exception to the prohibition on contracting for security functions at a military installation or facility. The exception applies during the period of time that United States armed forces are engaged in Operation Enduring Freedom and 180 days thereafter.

DATES: *Effective date:* March 14, 2002.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before May 13, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2001–D018 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra Haberlin, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2001–D018.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2465 prohibits DoD from entering into contracts for the performance of firefighting or security-guard functions at military installations or facilities, unless certain exceptions apply. Section 1010 of the USA Patriot Act (Public Law 107–56) adds another exception to this prohibition, to apply during the period of time that United States armed forces are engaged in Operation Enduring Freedom and 180 days thereafter. The exception permits award of contracts for security functions to proximately located local and State governments. This interim rule amends DFARS 237.102–70 to implement Section 1010 of Public Law 107–56.

This rule was not subject to Office of Management and Budget review under

Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to 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, *et seq.*, because the rule applies only to military installations and facilities and proximately located local and State governments. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001–D018.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 1010 of the USA Patriot Act (Public Law 107–56). Section 1010 permits DoD to enter into contracts for the performance of security functions at military installations and facilities during the period of time that United States armed forces are engaged in Operation Enduring Freedom and 180 days thereafter. Section 1010 became effective on October 26, 2001. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 237 is amended as follows:

1. The authority citation for 48 CFR part 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 237—SERVICE CONTRACTING

2. Section 237.102–70 is amended by adding paragraph (c) to read as follows:

237.102–70 Prohibition on contracting for firefighting or security-guard functions.

* * * * *

(c) Under Section 1010 of Public Law 107–56, this prohibition does not apply to any contract that'

(1) Is entered into during the period of time that United States armed forces are engaged in Operation Enduring Freedom or during the period 180 days thereafter;

(2) Is for the performance of security functions at any military installation or facility in the United States;

(3) Is awarded to a proximately located local or State government, or a combination of such governments, whether or not any such government is obligated to provide such services to the general public without compensation; and

(4) Prescribes standards for the training and other qualifications of local government law enforcement personnel who perform security functions under the contract in accordance with criteria established by the Secretary of the department concerned.

[FR Doc. 02–5953 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–U

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1515, 1533 and 1552

[FRL–7155–7]

Acquisition Regulation: Administrative Changes and Technical Amendments

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this rule to amend the EPA Acquisition Regulation (EPAAR) to eliminate two EPAAR requirements in order to streamline the EPA contracting process. The first requirement relates to the detail required in the EPA contracting officer's source selection decision. The second requirement relates to EPA contracting officer duties if there is a contractor appeal of a final decision of the contracting officer. In addition, technical amendments are being made to the EPAAR solicitation provision entitled ''Procedures for Participation in the EPA Mentor-Protege Program.''

DATES: This rule is effective on June 12, 2002 without further notice, unless EPA receives adverse comments by April 15, 2002. If we receive adverse comments, we will, before the rule's effective date, publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be submitted to Larry Wyborski, US Environmental Protection Agency, Office of Acquisition Management (3802R), 1200 Pennsylvania Avenue, NW., Washington, DC 20004, or electronically at: *wyborski.larry@epamail.epa.gov.*

FOR FURTHER INFORMATION CONTACT: Larry Wyborski, U.S. Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Avenue, NW, Ariel Rios Building, Washington, DC 20004, (202) 564–4369, *wyborski.larry@epamail.epa.gov*

SUPPLEMENTARY INFORMATION:

A. Background

EPA's Office of Acquisition Management established a Procurement Guidance Work Group to assess EPA acquisition policies and recommend changes where appropriate. Among the recommendations were two changes to the EPAAR to eliminate requirements which either: (1) Duplicate other Federal Regulations, or (2) outline unnecessary procedural requirements for EPA contracting officers. Specifically, EPAAR 1515.308–71 provides procedural requirements for documentation in source selection decisions over and above those required by Federal Acquisition Regulation (FAR) 15.308. The EPA Procurement Guidance Work Group determined these additional procedural requirements are not necessary, and therefore should be removed from the EPAAR. The Procurement Guidance Work Group also determined that EPAAR 1533.212, Contracting Officer's duties upon appeal, essentially duplicate procedures set forth in 43 CFR part 4 (Department of Interior Board of Contract Appeals Regulations) and should therefore be removed from the EPAAR.

In addition, technical amendments are being made to the solicitation provision at EPAAR 1552.219–71, Procedures for Participation in the Mentor-Protege Program, in order to bring the provision into compliance with statutory language. Specifically, since Pub. L. 102–389 (EPA's 1993 Appropriations Act) did not require certain restrictions on the mentor-protege program previously specified in the provision, these restrictions have been eliminated.

B. Executive Order 12866

This is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs, within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

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

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

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

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

E. 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 their regulatory actions on State, local, and Tribal governments, and the private sector. This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risk.

G. Executive Order 13132

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'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

H. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and tribal 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 direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, as specified in Executive Order 13175. The rule in an acquisition regulation that is technical and administrative in nature. Thus, Executive Order 13175 does not apply to this rule.

I. National Technology Transfer and Advancement Act of 1995

EPA will use voluntary consensus standards, as directed by 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), in its procurement activities when applicable. The NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering use of any voluntary consensus standards. EPA welcomes comments on this aspect of the rule making, and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

K. Submission to Congress and the General Accounting Office

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 rules 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 48 CFR Parts 1515, 1533 and 1552

Government procurement.

Therefore, 48 CFR chapter 15 is amended as set forth below:

1. The authority citation for parts 1515, 1533 and 1552 is revised to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

1515.308–71 [Removed]

2. 1515.308–71 is removed.

1553.212 [Removed]

3. Section 1533.212 is removed.

4. Section 1552.219–71 is revised to read as follows:

1552.219–71 Procedures for Participation in the EPA Mentor-Protege Program.

As prescribed in 1519.203(b), insert the following provision:

PROCEDURES FOR PARTICIPATION IN THE EPA MENTOR-PROTEGE PROGRAM **(Oct 2000)**

(a) This provision sets forth the procedures for participation in the EPA Mentor-Protege Program (hereafter referred to as the Program). The purpose of the Program is to increase the participation of concerns owned and/or controlled by socially and economically disadvantaged individuals as subcontractors, suppliers, and ultimately as prime contractors; to establish a mutually beneficial relationship between these concerns and EPA's large business prime contractors (although small businesses may participate as Mentors); to develop the technical and corporate administrative expertise of these concerns, which will ultimately lead to greater success in competition for contract opportunities; to promote the economic stability of these concerns; and to aid in the achievement of goals for the use of these concerns in subcontracting activities under EPA contracts. If the successful offeror is accepted into the Program they shall serve as a Mentor to a Protege firm(s), providing developmental assistance in accordance with an agreement with the Protege firm(s).

(b) To participate as a Mentor, the offeror must receive approval in accordance with paragraph (h) of this section.

(c) A Protege must be a concern owned and/or controlled by socially and economically disadvantaged individuals within the meaning of section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 673(a)(5) and (6)), including historically black colleges and universities. Further, in accordance with Public Law 102–389 (the 1993 Appropriation Act), for EPA's contracting purposes, economically and socially disadvantaged individuals shall be deemed to include women.

(d) Where there may be a concern regarding the Protege firm's eligibility to participate in the program, the protege's eligibility will be determined by the contracting officer after the SBA has completed any formal determinations.

(e) The offeror shall submit an application in accordance with paragraph (k) of this section as part of its proposal which shall include as a minimum the following information.

(1) A statement and supporting documentation that the offeror is currently performing under at least one active Federal contract with an approved subcontracting plan and is eligible for the award of Federal contracts;

(2) A summary of the offeror's historical and recent activities and accomplishments under any disadvantaged subcontracting programs. The offeror is encouraged to include any initiatives or outreach information believed pertinent to approval as a Mentor firm;

(3) The total dollar amount (including the value of all option periods or quantities) of EPA contracts and subcontracts received by the offeror during its two preceding fiscal years. (Show prime contracts and subcontracts separately per year);

(4) The total dollar amount and percentage of subcontract awards made to all concerns owned and/or controlled by disadvantaged individuals under EPA contracts during its two preceding fiscal years. If recently required to submit a SF 295, provide copies of the two preceding year's reports;

(5) The number and total dollar amount of subcontract awards made to the identified Protege firm(s) during the two preceding fiscal years (if any).

(f) In addition to the information required by paragraph (e) of this section, the offeror shall submit as a part of the application the following information for each proposed Mentor-Protege relationship:

(1) Information on the offeror's ability to provide developmental assistance to the identified Protege firm and how the assistance will potentially increase contracting and subcontracting opportunities for the Protege firm.

(2) A letter of intent indicating that both the Mentor firm and the Protege firm intend to enter into a contractual relationship under which the Protege will perform as a subcontractor under the contract resulting from this solicitation and that the firms will negotiate a Mentor-Protege agreement. The letter of intent must be signed by both parties and contain the following information:

(i) The name, address and phone number of both parties;

(ii) The Protege firm's business classification, based upon the NAICS code(s) which represents the contemplated supplies or services to be provided by the Protege firm to the Mentor firm;

(iii) A statement that the Protege firm meets the eligibility criteria;

(iv) A preliminary assessment of the developmental needs of the Protege firm and the proposed developmental assistance the Mentor firm envisions providing the Protege. The offeror shall address those needs and how their assistance will enhance the Protege. The offeror shall develop a schedule to assess the needs of the Protege and establish criteria to evaluate the success in the Program;

(v) A statement that if the offeror or Protege firm is suspended or debarred while performing under an approved Mentor-Protege agreement the offeror shall promptly give notice of the suspension or debarment to the EPA Office of Small Disadvantaged Business Utilization (OSDBU) and the

contracting officer. The statement shall require the Protege firm to notify the Contractor if it is suspended or debarred.

(g) The application will be evaluated on the extent to which the offeror's proposal addresses the items listed in paragraphs (e) and (f) of this section. To the maximum extent possible, the application should be limited to not more than 10 single pages, double spaced. The offeror may identify more than one Protege in its application.

(h) If the offeror is determined to be in the competitive range, or is awarded a contract without discussions, the offeror will be advised by the contracting officer whether their application is approved or rejected. The contracting officer, if necessary, may request additional information in connection with the offeror's submission of its revised or best and final offer. If the successful offeror has submitted an approved application, they shall comply with the clause titled ''Mentor-Protege Program.''

(i) Subcontracts of $1,000,000 or less awarded to firms approved as Proteges under the Program are exempt from the requirements for competition set forth in FAR 44.202–2(a)(5), and 52.244–5(b). However, price reasonableness must still be determined and the requirements in FAR 44.202–2(a)(8) for cost and price analysis continue to apply.

(j) Costs incurred by the offeror in fulfilling their agreement(s) with a Protege firm(s) are not reimbursable as a direct cost under the contract. Unless EPA is the responsible audit agency under FAR 42.703–1, offerors are encouraged to enter into an advance agreement with their responsible audit agency on the treatment of such costs when determining indirect cost rates. Where EPA is the responsible audit agency, these costs will be considered in determining indirect cost rates.

(k) Submission of Application and Questions Concerning the Program.

The application for the Program for Headquarters and Regional procurements shall be submitted to the contracting officer, and to the EPA OSDBU at the following address: Socioeconomic Business Program Officer, Office of Small and Disadvantaged Business Utilization, U.S. Environmental Protection Agency, Ariel Rios Building (1230A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564–4322, *Fax:* (202) 565–2473.

The application for the Program for RTP procurements shall be submitted to the contracting officer, and to the Small Business Specialist at the following address: Small Business Program Officer, RTP Procurement Operations Division (E105–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, *Telephone:* (919) 541–2249, Fax: (919) 541–5539.

The application for the Program for Cincinnati procurements shall be submitted to the contracting officer, and to the Small Business Specialist at the following address: Small and Disadvantaged Business Utilization Officer, Cincinnati Procurement Operations Division (CPOD-Norwood), U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Telephone: (513) 487–2024 *Fax:* (513) 487–2004.

(End of provision)

Dated: February 28, 2002.

Judy S. Davis,

Director, Office of Acquisition Management.

[FR Doc. 02–5743 Filed 3–13–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI35

Endangered and Threatened Wildlife and Plants: Listing the Desert Yellowhead as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), determine *Yermo xanthocephalus* (desert yellowhead) to be threatened under the authority of the Endangered Species Act of 1973, as amended. This plant is a recently described Wyoming endemic known only from the south end of Cedar Rim on the summit of Beaver Rim in southern Fremont County, Wyoming. It is known from a single population with plants found scattered over an area of 20 hectares (50 acres). The total area actually occupied by the population is only 3.37 hectares (8.33 acres) within the 20 hectares. In 2001 this population contained 11,967 plants and existed entirely on Federal lands. Surface disturbances associated with oil and gas development, compaction by vehicles, trampling by livestock, and randomly occurring, catastrophic events threaten the existing population.

EFFECTIVE DATE: April 15, 2002.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 4000 Airport Parkway, Cheyenne, WY 82001.

FOR FURTHER INFORMATION CONTACT: Mike Long, Field Supervisor, Wyoming Field Office (see **ADDRESSES** section), telephone 307/772–2374; facsimile (307) 772–2358.

SUPPLEMENTARY INFORMATION:

Background

Yermo xanthocephalus was discovered by Wyoming botanist Robert Dorn while conducting field work in the Beaver Rim area of central Wyoming in 1990. Dorn discovered a small population of an unusual species of Composite (Asteraceae). Dorn's closer examination revealed that the species was unknown to science and represented a new genus. Dorn (1991) named his discovery *Y. xanthocephalus*, or literally ''desert yellowhead.''

Yermo xanthocephalus is a tap-rooted, glabrous (hairless) perennial herb with leafy stems to 30 centimeters (cm) (12 inches (in)) high. The leathery leaves are alternate, lance-shaped to oval, 4 to 25 cm (1.5 to 10 in) long and often folded along the midvein. Leaf edges are smooth or toothed. Flower heads are many (25 to 180) and crowded at the top of the stem. Each head contains four to six yellow disk flowers (ray flowers are absent) surrounded by five yellow, keeled involucre (whorled) bracts (small leaves beneath the flower). The pappus (the outer whorl of flowering parts) consists of many white bristles.

The species is restricted to shallow deflation hollows in outcrops of Miocene sandstones of the Split Rock Formation (Van Houten 1964). These wind-excavated hollows accumulate drifting snow and may be more mesic (moist) than surrounding areas. The vegetation of these sites is typically sparse, consisting primarily of low-cushion plants and scattered clumps of Indian ricegrass (*Stipa hymenoides*).

Dorn observed approximately 500 plants within 1 hectare (2.5 acres) in 1990 on Federal land managed by the Bureau of Land Management (BLM). Surveys conducted since 1990 by Richard Scott, Curator of the Central Wyoming College Herbarium in Riverton, have failed to locate additional populations on outcrops of the White River, Wagon Bed, and Wind River formations in the Beaver Rim area. The estimate of the plant population's size has increased from 500 in 1990 to 11,967 plants in 2001. However, Dorn's original estimate of 500 plants was a visual estimate and did not include 2 nearby subpopulations, while Scott has been counting all plants in all 3 subpopulations using a monitoring grid. Therefore, the difference in estimates may be largely the result of different techniques used over differing acreages and cannot be assumed to show a significantly increasing trend in population size between 1990 and 2001. Based upon Scott's data collected from 1995 through 2001, the actual population count has increased from 9,293 in 1995 to 11,967 in 2001, possibly in response to higher than normal precipitation over the study period (R. Scott, Central Wyoming College, pers. comm., 2001).

Previous Federal Action

In the plant notice of review published on September 30, 1993 (58 FR 51144), we designated *Yermo xanthocephalus* a Category 2 species for potential listing under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). At that time, Category 2 species were those for which data in our possession indicated listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support a proposed rule. On February 28, 1996, we published a Notice of Review in the **Federal Register** (61 FR 7596) that discontinued the designation of Category 2 species as candidates, and this species was upgraded to candidate status at that time. A candidate is a species for which we possess substantial information on biological vulnerability and threats to support preparation of a listing proposal.

On November 24, 1997, we received a petition from the Biodiversity Legal Foundation and Biodiversity Associates alleging that *Yermo xanthocephalus* warranted emergency listing. On December 22, 1997, we notified the petitioners that emergency listing was not appropriate because BLM regulations provided some conservation measures for the species, and current exploratory oil and gas activities near the known occupied habitat of *Y. xanthocephalus* were being coordinated with our staff in the Wyoming Field Office. In addition, we notified the petitioners that petitions for candidate species are considered second petitions, because candidate species are species for which we have already decided that listing is warranted. Therefore, no 90-day finding was required for Biodiversity Legal Foundation's petition.

The proposed rule to list *Yermo xanthocephalus* as threatened was published in the **Federal Register** on December 22, 1998 (63 FR 70745). With a **Federal Register** publication on September 5, 2000 (65 FR 53691), we reopened the comment period. In the same publication, we sought comments regarding a draft conservation agreement, assessment, and strategy submitted by BLM for our consideration when making this listing decision. The conservation agreement, assessment, and strategy was never finalized or signed and has not been considered as a firm commitment to perform the actions when assessing conservation commitments in making this listing decision.

On August 9, 1999, BLM segregated (proposed withdrawal of) 3,759.12 acres surrounding the population of *Yermo xanthocephalus* for 2 years from location and entry under the General Mining Act of 1872, and from settlement, sale, location, and entry under the general land laws (64 FR 43209). However, this segregation expired on August 9, 2001, with no finalized withdrawal in place.

On November, 12, 2001, Biodiversity Legal Foundation, Biodiversity Associates, Center for Native Ecosystems, and Wyoming Outdoor Council filed a complaint in the U.S. District Court of Colorado alleging that the Service failed to make a timely final listing determination and critical habit designation for *Yermo xanthocephalus*.

Summary of Comments and Recommendations

In the December 22, 1998, proposed rule (63 FR 70745) we requested that all interested parties submit factual reports and information that might contribute to the development of this final rule. The comment period for the proposed rule was open from December 22, 1998, through February 22, 1999. On September 5, 2000, the comment period was reopened (65 FR 53691) to accommodate the public notice requirement of the Act, consider any new scientific information, and allow for comments on the draft conservation agreement submitted by BLM. We published legal notices in the ''Casper Star Tribune'' on September 5, 2000, and in the ''Riverton Ranger'' and the ''Lander Journal'' on September 6, 2000. The reopened comment period closed October 5, 2000.

During the initial comment period, 12 sets of comments were received. During the reopened comment period, we received 3 sets of comments regarding the proposed listing action. Additionally, 4 sets of comments were received by BLM regarding its draft conservation agreement, assessment, and strategy. We had no requests for a public hearing during either comment period. Of the comments we received, 8 supported, 3 opposed, and 4 were neutral regarding the proposed threatened status for *Yermo xanthocephalus*.

We updated the final rule to reflect comments and information we received during the comment period. We address opposing comments and other substantive comments concerning the rule below.

Issue 1: Yermo xanthocephalus warrants endangered status, not threatened status.

Response: As mentioned above, the population of Yermo xanthocephalus has increased from 9,293 individuals in 1995 to 11,967 individuals in 2001. The future existence of the species is threatened by potential oil and gas development and other factors, including its extremely limited range. Although we believe the species is likely to become endangered in the foreseeable future if the threats to the habitat are realized, the population has shown stability since 1995. Additionally, the population occurs on Federal land and BLM is cooperating with interested parties to conserve the plant. A monitoring and research program is being implemented as well. As a result, *Y. xanthocephalus* does not meet the definition of an endangered species under the Act because it is not in imminent danger of extinction in the foreseeable future. Therefore, listing as threatened is appropriate.

Issue 2: Listing of *Yermo xanthocephalus* is not warranted since the population has increased from 500 plants in 1990 to an estimated 15,000 plants in 1998.

Response: The proposed rule did indicate that the population contained an estimated 15,000 plants. The actual population size (based upon counting of all plants) was 11,635. The population has fluctuated between 9,293 and 13,244 since 1995, with the 2001 population being comprised of 11,927 individual plants. However, a meaningful comparison of the recent numbers with Dorn's initial estimate is not possible. The 1990 estimate of 500 plants made by Dorn was based purely on a visual estimate of 1 subpopulation within 1 hectare (2.5 acres). Subsequent surveys since 1995 by Dick Scott have involved counting all plants in all three subpopulations. It is not possible to make trend estimates comparing such different survey methods implemented on disparate acreages.

Issue 3: Listing *Yermo xanthocephalus* will draw attention to its location and increase the risk of harm through vandalism or collection. Similarly, critical habitat designation is not prudent because it will increase these risks.

Response: We remain concerned that publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers could increase the vulnerability of this plant to incidents of collection, general vandalism, and trampling by curiosity-seekers. However, we do not believe the listing of *Yermo xanthocephalus* increases the likelihood of such activities. The general location of *Y. xanthocephalus* is widely known by

many citizens. At this time we have no specific evidence of taking, vandalism, collection or trade of this species. We do not believe listing the species will increase this threat. Additionally, in the absence of specific evidence, we cannot conclude that designation of critical habitat would not be prudent based on increased threat. See the Critical Habitat section below for more detailed discussion of this issue.

Issue 4: Livestock use of the area and associated potential adverse effects to *Yermo xanthocephalus* are not characterized correctly.

Response: We have adjusted our description of livestock use in the area to better reflect information provided during the comment period. We acknowledge that livestock grazing may not currently be resulting in significant adverse effects to the *Yermo xanthocephalus* population. However, we believe a low level of adverse effect is occurring with the potential to become more significant in the future.

Issue 5: The existing data contain significant gaps and the Service should complete studies prior to making a listing determination.

Response: We thoroughly reviewed all scientific data available on *Yermo xanthocephalus* in preparing the proposed rule. We contacted experts and reviewed data collected since intensive population monitoring began in 1995. We based our opinion on the best scientific and commercial data available, as required by section 4(b)(1) of the Act. We have reviewed this information and any new information available since the date of the proposed rule in making this final listing decision.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we requested the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to supportive biological and ecological information in the proposed rule. The purpose of such review is to ensure that the listing decision is based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. Two of the specialists responded with comments. We have incorporated their comments into the final rule, as appropriate, and summarized their observations below.

One reviewer questioned the adequacy of the Act to appropriately protect *Yermo xanthocephalus* without making it more vulnerable to collectors and vandals. Additionally, the reviewer believed that certain land use changes (such as restriction of cattle and wildlife grazing) might be detrimental to the plant.

The second reviewer believed the evidence supported listing *Yermo xanthocephalus* as either threatened or endangered. The reviewer provided information regarding unsuccessful attempts to locate *Y. xanthocephalus* in other suitable habitat and indicated it is unlikely other populations of *Y. xanthocephalus* will be found. This reviewer expressed concerns regarding the likelihood that adequate funding and commitment will be provided to implement the BLM conservation strategy for the species. Additionally, the reviewer indicated a need for captive propagation and establishment of new populations as necessary conservation measures that should be implemented.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Yermo xanthocephalus* (desert yellowhead) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range:* The entire known range of *Yermo xanthocephalus* consists of an area of 20 hectares (50 acres) in southern Fremont County, Wyoming. Surveys conducted since 1990 have failed to find additional populations, although there are a number of sites with similar soils, drainage and plant associations in the area. Surveys conducted since 1995 by Dr. Ron Hartman in similar potential habitat within the North Platte watershed, Washakie basin, Great Divide basin, and Green River basin have proved equally unsuccessful in locating additional populations (W. Fertig, University of Wyoming, *in litt.*, 1999). The plant is easily recognized during its summer flowering season, so it seems likely that surveys would have found additional populations if they exist. Therefore, the species is vulnerable to extinction from even small-scale habitat degradation due to its small population size and limited geographic range.

The known population is threatened by surface disturbances associated with recreation, oil and gas development, mineral extraction, trampling by livestock, and soil compaction by vehicles (Fertig 1995). Recreational off-road vehicle use presents a threat to *Yermo xanthocephalus* through the crushing of plants and compaction or erosion of soil. This threat is greatest in the spring and summer when plants are in flower or heavy with fruit. No physical barriers prevent vehicle use in the immediate area of the *Y. xanthocephalus* population. The known population is several miles from Wyoming State Highway 135 and other maintained roads. In 1996, Highway 135 had an estimated daily traffic of 360 vehicles (Wyoming Department of Transportation 1996). A two-track, four-wheel drive trail leading to an abandoned oil well bisects the population, and is open to hunters or other recreationists using four-wheel drive trucks and other smaller all-terrain vehicles (ATVs). The most common activities that attract users to the area are hunting, rock collecting, and searching for human artifacts (such as arrowheads). The population is a few miles north of the Sweetwater Crossing on the Oregon-California Trail, which is a popular tourist attraction. There has been no significant surface disturbance caused by vehicles during the past 6 years that the site has been under study (R. Scott, Central Wyoming College, pers. comm., 2001). However, Scott (2000) has noted light vehicular traffic and fresh tire tracks in the site. The BLM Resource Management Plan limits vehicle use to existing roads (including established two-tracks), but the potential for habitat and plant destruction by ATVs remains a threat.

Oil and gas development also threaten the known population. In 1997, BLM leased for oil and gas development a 1,160-acre tract (designated WYW140702) that encompasses the *Yermo xanthocephalus* population. An adjacent lease (WYW138846) consisting of 2,080 acres was purchased by the same operator in May 1996. Both leases are for a 10-year period, and no specific lease stipulations were included to protect the plant. Construction of well pads, access roads, and pipelines through occupied habitat would result in direct destruction or crushing of plants and soil compaction and erosion. The 1920 Mineral Leasing Act promotes maximum recovery of Federal mineral resources. However, the 1987 Amendments to the Mineral Leasing Act (30 U.S.C. 226(g)) require lessees to have an approved operating plan that protects surface resources prior to submitting Applications for Permission to Drill. The BLM regulations provide that

species that are candidates for listing under the Act be afforded protection.

The current lessee is aware that the plant exists in the area, and has been very cooperative with BLM staff. The current drilling plan proposes exploration in locations that should not pose a threat to *Yermo xanthocephalus*, but the current operator is free to sell its leases to other companies that could revise the drilling plan. An existing two-track road leading to an abandoned oil well currently bisects the only population of *Y. xanthocephalus*. Redrilling of abandoned wells in search of producing formations that may have been previously overlooked is a common technique used during oil and gas exploration. Permits to drill can be conditioned by BLM to provide some protection to sensitive species by requiring a proposed drill pad be relocated up to 200 meters (656 feet). Candidate, proposed, and listed species can be protected by prohibiting surface occupancy in known populations.

Although the current oil and gas exploratory wells pose no threat to *Yermo xanthocephalus,* the discovery of an oil or gas pool on the lease areas would precipitate field developments that would introduce new threats to the plant and its habitat. In-field development could involve up to eight wells per section, depending on the characteristics of the producing formations. This intensified drilling activity would result in a new network of additional roads and well pads, and more human intrusion into what is now a remote area.

Seismic explorations for oil and gas producing formations also present a threat to *Yermo xanthocephalus* and its habitat through use of explosives, direct trampling, and soil compaction. However, these activities were carried out in the lease area during the early 1990s, so a permit application for further exploration is not likely. In addition, seismic explorations on BLM surface now require environmental analysis prior to permitting, and BLM will protect occupied *Y. xanthocephalus* habitat from damage if a request for further exploration is received (J. Kelly, BLM, pers. comm., 1998).

The known *Yermo xanthocephalus* population is located in an area managed by BLM's Lander Field Office, and locatable mineral resources, such as gold and uranium, are known to exist in that part of Wyoming. Private parties can stake a mining claim, explore for, and extract locatable minerals in accordance with the 1872 General Mining Law, and such activity could jeopardize the known population of *Y. xanthocephalus.* Uranium and zeolites, a locatable mineral with properties useful in water softening, manufacturing of catalysts, and pollution control, are found in the Beaver Rim area. Zeolites also may have marketability for use in processes to remove radioactive products from radioactive wastes (Bureau of Land Management 1986). The BLM's authority to regulate mineral claims under the 1872 General Mining Law is limited, although mining activities in areas with 5 or more acres of surface disturbance of unpatented BLM land are required to have an approved operating plan under 43 CFR 3809. Although the staking of locatable mineral claims on or near the plant's habitat is not likely, official withdrawal of the area from locatable mineral claims would remove this threat.

Livestock grazing also may present a threat to *Yermo xanthocephalus* habitat, which is within an existing grazing allotment. Although Fertig (1995) indicated livestock appear to use the *Y. xanthocephalus* habitat primarily as a travel corridor between adjacent sagebrush-grassland pastures, the area is actually a large pasture and livestock trampling of plants occurs only as cattle casually move along ''cow trails'' or two-tracks while grazing or moving to water. Scott (2000) noted signs of moderate horse traffic adjacent to the site. There are no existing barriers to prevent livestock access to the habitat. Fencing of the area would protect the plants from this threat, but also would probably result in a change in the associated plant community in the habitat. This change could result in unanticipated adverse impacts to the survival of *Y. xanthocephalus.*

B. *Overutilization for commercial, recreational, scientific, or educational purposes: Yermo xanthocephalus* is vulnerable to over-collecting conducted for scientific or educational purposes because of its small extant population size and habitat. The leaves of *Y. xanthocephalus* contain a chemical that produces a mild numbing sensation in the human mouth when even tiny portions are tasted (R. Scott, pers. comm., 1998). This could indicate potential medicinal qualities that could prove attractive to pharmaceutical companies, but the potential for this to be a threat to the existing population is currently unknown.

C. *Disease or predation:* Cattle graze in the immediate vicinity of occupied Yermo xanthocephalus habitat, but observation on the site indicate that the plant is not palatable to grazers. Tracks reveal that domestic and wild animals grazing the area spit out *Y. xanthocephalus* leaves and flowers after tasting (R. Scott, pers. comm., 1998). Predation of *Y. xanthocephalus* fruit by insects does occur, and in 1990 fruit production appeared low because of insect predation. However, it is unknown whether or not the extent of current predation differs from historical levels. Therefore, the degree of threat that this factor poses to the species is unknown.

D. *The inadequacy of existing regulatory mechanisms:* The State of Wyoming has no endangered species act or other laws to provide protection to plant species. The current BLM Lander Resource Management Plan (RMP), which covers the known population of *Yermo xanthocephalus,* was approved in 1987, 3 years prior to the species' discovery. Therefore, the plan does not specifically mention the species. The RMP protects special status plant species in general across the entire Resource Area, and provides no-surface-occupancy restrictions for threatened and endangered species impacted by oil and gas development. As *Y. xanthocephalus* is not currently listed, and no specific stipulations were included with the current oil and gas leases, attempts by BLM to restrict activities by imposing conditions during the application to drill stage are appealable by the operator. On April 9, 2001, BLM approved a list of sensitive species occurring on BLM properties in Wyoming. The list is intended to heighten awareness of the conservation needs of the species and encourage protective measures where possible. However, there are no protective measures mandated for the species. Additionally, *Y. xanthocephalus* is not currently on the sensitive species list and would have to be officially added.

E. *Other natural or manmade factors affecting its continued existence:* Species with small population size and restricted distribution are vulnerable to extinction by natural processes and human disturbance (Levin et al. 1996). Random events causing population fluctuations or population extirpations become a serious concern when the number of individuals or the geographic distribution of the species is very limited. A single human-caused or natural environmental disturbance could destroy the entire population of *Yermo xanthocephalus.*

This species physically occupies an area of 3.37 hectares (8.33 acres), and while the total number of plants known to exist through actual counting of each plant has increased from 9,293 in 1995 to 11,967 in 2001 (with a high of 13,244 in 2000), this increase may be due to higher than normal precipitation during study years (R. Scott, Central Wyoming

College, pers. comm., 2001). The establishment of this species is probably episodic and dependent on suitable spring and summer moisture conditions (Fertig 1995). Total fruit production appeared low due to heavy herbivory by insects and drought-induced abortion in 1990 (Dorn 1991). Dorn further speculated that in typical years recruitment of seedlings is probably extremely low or nil. However, observations since then have not supported that reproduction is necessarily low or that heavy herbivory by insects causes low reproduction. Drought-induced abortion has not been studied (Bureau of Land Management 1998). A decrease in population size from 12,099 plants in 1997 to 11,635 plants in 1998 may have been due to overall decreased precipitation (R. Scott, Central Wyoming College, pers. comm., 2001). A similar decrease in population size from 13,244 plants in 2000 to 11,967 in 2001 was noted and seems to have coincided with decreased precipitation. Therefore, a series of drought years could result in a severe reduction in population size and eventual extinction.

As described by Fertig (1995), the species is characterized by a long-lived perennial growth form, adaptation to severe habitats, and low annual reproductive output. This low reproductive output makes the species increasingly vulnerable to extinction due to chance events as population size declines, because it is unlikely that the species will exhibit a high rate of population growth, even if environmental conditions improve after such an event.

In addition to the above factors, threats to *Yermo xanthocephalus* are increased when people use the occupied area for recreational purposes. For example, erosion or trampling of plants is possible due to hikers or off-road vehicle use. The species occurs on barren sites with less than 25 percent total vegetative cover, and may be intolerant of competition (Fertig 1995). Competition from plants not native to the area would pose a greater threat than competition from species with which *Y. xanthocephalus* has evolved. Non-native plants that might outcompete *Y. xanthocephalus* could be introduced to the area if their seeds are carried in on the footwear or clothing of recreationists.

An additional threat that affects *Yermo xanthocephalus* is that posed by its small population size. Populations of plants that remain very small for several generations or that have gone through a past episode of rapid population decline may lose much of their previous genetic variability (Godt et al. 1996). When a population's genetic variability falls to low levels, its long-term persistence may be jeopardized because its ability to respond to changing environmental conditions is reduced. In addition, the potential for inbreeding depression increases, which means that fertility rates and survival rates of offspring may decrease. Although environmental and demographic factors usually supercede genetic factors in threatening species viability, inbreeding depression and the low genetic diversity may enhance the probability of extinction of rare plant species (Levin et al. 1996).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Yermo xanthocephalus* in determining to issue this final rule. Based on this evaluation, the preferred action is to list *Y. xanthocephalus* as threatened. Although the population has increased since 1995, the future existence of the species is still threatened by potential oil and gas in-field development and by its extremely limited habitat and population size. While not in immediate danger of extinction, *Y. xanthocephalus* is likely to become an endangered species in the foreseeable future if the threats to the habitat are realized and if present threats posed by small population size and limited geographic range continue to exist. We have determined that threatened status would provide adequate protection from the described threats. As the species occurs only on Federal surface, a classification as endangered, if warranted, would provide no additional level of protection.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency (see Available Conservation Measures section). As such, designation of critical habitat may affect activities on Federal lands and may affect activities on non-Federal lands where such a Federal nexus exists. Under section 7 of the Act, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of a species or result in destruction or adverse modification of critical habitat. However, both jeopardizing the continued existence of a species and adverse modification of critical habitat often have similar standards and thus similar thresholds for violation of section 7 of the Act.

Critical habitat designation, in some situations, may provide some value to the species by identifying areas important for species conservation and calling attention to those areas in special need of protection. Critical habitat designation of unoccupied habitat also may benefit these species by alerting permitting agencies to potential sites for reintroduction and allowing them the opportunity to evaluate proposals that may affect those areas.

In the proposed rule, we found that the designation of critical habitat for *Yermo xanthocephalus* was not prudent because the minimal benefits of such designation would be far outweighed by the increase of threats from over collection or other human activities. We believed critical habitat designation would provide no additional benefit to the species beyond that conferred under sections 7 and 9 of the Act by listing. We indicated protection of *Y. xanthocephalus* would be most effectively addressed through the recovery process under section 4 of the Act and the consultation process under section 7 of the Act, and the current interagency coordination processes.

Given the extremely limited range of *Yermo xanthocephalus,* we believed any case of adverse modification of its habitat also would constitute jeopardy

for the taxon. The designation of critical habitat for the purpose of informing Federal agencies of the location of occupied *Y. xanthocephalus* habitat was not thought to be necessary because BLM currently permits the surveys and monitoring of the only extant population. *Yermo xanthocephalus* is not known to have previously existed on any other sites. If future management actions include unoccupied habitat, the Service believed any benefit provided by designation of such habitat as critical would be conferred more effectively and efficiently through the current coordination process.

In the proposed rule, we indicated vandalism and unauthorized collection of *Yermo xanthocephalus* could be a significant threat to the species' survival and recovery, because of the plant's rarity and the fact that it is a monotypic genus. Critical habitat designation would require publication of the legal description of the 20 hectares (50 acres) habitat site in the **Federal Register**, providing information that might encourage collectors.

We received two comments agreeing with our prudency determination based upon possible adverse effects from collecting if the location of the plant is disclosed. Two commenters also expressed concern that the listing alone may draw attention to the plant's location and possibly lead to adverse effects from collection or vandalism.

Recent court decisions (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)) have forced us to reevaluate our ''not prudent'' finding. The *Conservation Council* ruling is particularly relevant to our determination. In that case, the court held that in order to conclude that designation would increase the risk to the species, the Service must have evidence of specific threats (such as instances of collection and vandalism) that would be increased by designation of critical habitat. The court said that without species-specific evidence, the fact that there are few plants and that even a single taking could cause the species to become extinct was not sufficient justification for a ''not prudent'' finding based on increased threat.

We remain concerned that publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers could increase the vulnerability of this plant to incidents of collection, general vandalism, and trampling by curiosity-seekers. Due to the relatively low numbers of individuals, small area covered by the population, and the inherent transportability of plants, *Yermo xanthocephalus* is vulnerable to collection and other disturbance. However, at this time we have no specific evidence of taking, vandalism, collection or trade of this species. This may be due to its fairly recent description as a new species to science and its remote location. Nonetheless, in the absence of specific evidence, we cannot conclude that designation would not be prudent based on increased threat.

Without a finding that critical habitat would increase threats to a species, then designation would be prudent if it would provide any benefits to the species. As to benefits of designation on Federal land, the court ruled in *Conservation Council of Hawaii* v. *Babbitt* that if even as a general rule an action that would adversely modify critical habitat was likely to jeopardize the continued existence of the species, the Service must consider the adverse modification/jeopardy relationship for each species individually. The court also ruled that designation of critical habitat on any type of land serves to educate the public and government officials that this habitat is essential to the protection of the species.

With this taxon, designation of critical habitat may provide some minor benefits. The primary regulatory effect of critical habitat designation is to require Federal agencies to consult before taking any action that could destroy or adversely modify critical habitat. A critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome, because an action that destroys or adversely modifies such critical habitat also would be likely to result in jeopardy to the species. However, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include designated unoccupied habitat or occupied habitat that may become unoccupied in the future. No such habitat is known at this time, but some may be found in the future. Additionally, there will be educational or informational benefits from designating critical habitat.

Reevaluating our prudency determination under the standards mandated by court decisions, we find that designation of critical habitat for *Yermo xanthocephalus* is prudent. However, our budget for listing activities is currently insufficient to allow us to immediately complete all the listing actions required by the Act. Listing *Y. xanthocephalus* as threatened without designation of critical habitat will allow us to concentrate our limited resources on other listing actions that must be addressed, while allowing us to invoke the protections needed for the conservation of this species without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without critical habitat designations when it is essential that such determinations be promptly published. We will prepare a critical habitat designation in the future at such time when our available resources and priorities allow.

Available Conservation Measures

Conservation measures provided to a species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, local and private agencies, groups, and individuals. The Act provides for possible land acquisition, cooperation with the States, and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities impacting listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Thus, the Act will require BLM to evaluate potential impacts to *Yermo xanthocephalus* that may result from activities it authorizes or permits, such as oil and gas development, grazing, and

recreational use. No special land management designations or conservation agreements currently exist to provide special protection for *Y. xanthocephalus.* Section 43 U.S.C. 1712(c)(3) allows BLM to protect tracts as Areas of Critical Environmental Concern (ACEC). Designation of the plant's habitat as an ACEC is a long process and would not, in itself, afford the species protection, unless a management plan for the ACEC identified the protective measures to be put in place. The BLM has prepared a draft conservation agreement, assessment, and strategy which outlines management, inventory, and monitoring actions to be taken to ensure the conservation of this species. However, the draft has not been finalized or signed.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked ''Of Cultivated Origin.'' Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. We anticipate that few trade permits will ever be sought or issued for *Yermo xanthocephalus* because the species is not in cultivation or common in the wild. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (telephone (303) 236–7400, facsimile (303) 236–0027).

We adopted a policy on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on future and ongoing activities within a species' range. We believe that based upon the best available information, the actions listed below would not result in a violation of section 9 of the Act provided these activities are carried out in accordance with existing regulation and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, range management, rodent control, mineral development, road construction, human recreation, pesticide application, controlled burns) and construction/maintenance of facilities (e.g., fences, power lines, pipelines, utility lines) when such activity is conducted according to any reasonable and prudent measures given by the Service in a consultation conducted under section 7 of the Act; and

(2) Casual, dispersed human activities on foot (*e.g.,* bird watching, sightseeing, photography, and hiking).

The actions listed below may potentially result in a violation of section 9 of the Act; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal Lands;

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities, such as changes in land use, will constitute a violation of section 9 should be directed to the Wyoming Field Office (see **ADDRESSES** section).

Required Determinations

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared concerning regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new requests or requirements for collection of information, other than those associated with permits, already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget control number 1018–0094, which is valid through July 31, 2004. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

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Author

The primary author of this proposed rule is Mary Jennings of the Wyoming Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
FLOWERING PLANTS						
*	*	*	*	*	*	*
Yermo xanthocephalus	Desert yellowhead	U.S.A. (WY)	T	723	NA	NA
*	*	*	*	*	*	*

Dated: March 8, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–6134 Filed 3–13–02; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 67, No. 50
Thursday, March 14, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV02–905–1]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible producers of Florida citrus fruit to determine whether they favor continuance of the marketing order regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in the production area.

DATES: The referendum will be conducted from April 4, 2002 through April 26, 2002. To vote in this referendum, growers must have been producing Florida citrus during the period August 31, 2000, through September 1, 2001.

ADDRESSES: Copies of the marketing order may be obtained from the office of the referendum agent at 799 Overlook Drive, Suite A, Winter Haven, Florida 33884, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC, 20250–0237.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, Department of Agriculture, at 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone (863) 324–3375; or Melissa Schmaedick, Marketing Order Administration Branch, Fruit & Vegetable Programs, Agricultural Marketing Service, Department of Agriculture, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 905 (7 CFR part 905), hereinafter referred to as the ''order'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by producers. The referendum shall be conducted during the period April 4, 2002 through April 26, 2002 among Florida citrus producers in the production area. Only producers that were engaged in the production of Florida citrus during the period of August 31, 2000, through September 1, 2001, may participate in the continuance referendum.

The Department of Agriculture (USDA) has determined that continuance referenda are an effective means for ascertaining whether producers favor continuation of marketing order programs. The USDA would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of Florida citrus represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the USDA will consider the results of the referendum and other relevant information regarding operation of the order. USDA will evaluate the order's relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0189 for Florida citrus. It has been estimated that it will take an average of 20 minutes for each of the approximately 11,970 producers of Florida citrus to cast a ballot. Participation is voluntary. Ballots postmarked after May 6, 2002 will not be included in the vote tabulation.

William G. Pimental and Christian D. Nissen of the Southeast Marketing Field Office, and Melissa Schmaedick of the Washington, DC Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of the USDA to conduct such referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR part 900.400 *et seq*).

Ballots will be mailed to all producers of record and may also be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, and Tangerines.

Authority: 7 U.S.C. 601–674.

Dated: March 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6108 Filed 3–13–02; 8:45 am]
BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 01–018E]

Definitions and Standards of Identity or Composition: Elimination of the Pizza Standard

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule: Reopening and extension of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reopening and extending the comment period for the proposed rulemaking, ''Definitions and Standards of Identity or Composition: Elimination of the Pizza Standard,'' that closed on January 2, 2002. This action responds to requests from two trade associations and a private company to allow additional time for comment.

DATES: Comments are due April 15, 2002.

ADDRESSES: Send one original and two copies of written comments to FSIS Docket No. 01–018P, Department of Agriculture, Food Safety and Inspection Service, Room 102, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0279

SUPPLEMENTARY INFORMATION: On November 2, 2001, FSIS published a proposed rule, ''Definitions and Standards of Identity or Composition: Elimination of the Pizza Standard'' (66 FR 55601). In that document, the Agency proposed to amend the Federal meat inspection regulations to remove the standards of identity for ''pizza with meat'' and ''pizza with sausage'' and provided a 60-day comment period ending on January 2, 2002. FSIS received three comments requesting that the Agency extend the comment period for the proposed rule. Two comments from industry trade associations requested that the Agency extend the comment period for an additional 60 days and one comment from a private company requested that the Agency extend the comment period for an additional 90 days. The commenters requested additional time to get input and feed-back from trade association members who may be affected by the proposed rule and to conduct, gather, and analyze consumer research data. Because the comment period included the holiday season, the requestors asked for additional time to accommodate loss of time during the holidays.

FSIS has considered the requests and will reopen the comment period. However, FSIS is only reopening the comment period for an additional 30 days, which will provide additional time for comments to be made, while ensuring that the rulemaking proceeds in a timely manner. As a result of this reopening and extension, the comment period for the proposed rule will close on April 15, 2002.

Additional Public Notification

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

Margaret O'K Glavin,

Acting Administrator.

[FR Doc. 02–6125 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE174; Notice No. 23–02–01–SC]

Special Conditions: Installation of Full Authority Digital Engine Control (FADEC) System on Liberty Aerospace, Model XL–2 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Liberty Aerospace, Model XL–2 Airplane, which will use a FADEC System. This airplane will have a novel or unusual design feature associated with the installation of an engine that uses an electronic engine control system in place of the engine's mechanical system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before April 15, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE174, DOT Building, 901 Locust, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE174. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin 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.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting 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 proposals described in this action 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. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this action must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE174.'' The postcard will be date stamped and returned to the commenter.

Background

On October 26, 2000, Liberty Aerospace applied for a Type Certificate for the Model XL–2 airplane. The Model XL–2 is a small, normal category airplane. The airplane is powered by one reciprocating engine equipped with an electronic engine control system with full authority capability in place of the hydromechanical control system.

Type Certification Basis

• Under the provisions of 14 CFR 21.17, Liberty Aerospace must show that the Model XL–2 meets the applicable provisions of 14 CFR part 23, as amended by Amendments 23–1 through 23.53 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the Model XL–2 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model LC40–550FG must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates 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

Liberty Aerospace, Model XL–2 Airplane will incorporate the following novel or unusual design features:

Liberty Aerospace, Model XL–2 airplane will use an engine that includes an electronic control system with full engine authority capability.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic equipment. Since the electronic engine control system used on the Liberty Aerospace, Model XL–2 will perform critical functions, provisions for protection from the effects of HIRF fields should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this Notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the ARAC Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, JAA, and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a full authority digital engine control is an example of a system that should address the HIRF environments.

Even though the control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (e.g., radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (e.g., automated cockpit powerplant controls such as mixture setting). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for the Liberty Aerospace, Model XL–2 to provide HIRF protection and to evaluate the installation of the electronic engine control system for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23–46.

Applicability

As discussed above, these special conditions are applicable to the Liberty Aerospace, Model XL–2 Airplane. Should Liberty Aerospace apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model, Liberty Aerospace, Model XL–2 Airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

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 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Liberty Aerospace, Model XL–2 Airplane.

1. *High Intensity Radiated Fields (HIRF) Protection.* In showing compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system, which performs critical functions, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) 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 external HIRF threat environment defined in the following table:

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.

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 per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 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. Data used for engine certification may be used, when appropriate, for airplane certification.

2. *Electronic Engine Control System.* The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23–46. The intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement.

Issued in Kansas City, Missouri on February 5, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6131 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–166–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81, –82, and –83 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes. This proposal would require an inspection of the disconnect panel area above the aft left lavatory for chafed or damaged wires or unacceptable clearance between the wires and adjacent structure, and corrective actions, if necessary. This action is necessary to prevent chafing of wires at the disconnect panel above the aft left lavatory, which could result in electrical arcing, and consequent fire in the cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–166–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

- Submit comments using the following format:
- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–166–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident of uncommanded deployment of the cabin oxygen masks on a McDonnell Douglas Model MD–88 airplane. This deployment occurred as the airplane was in flight climbing through 19,000 feet. The oxygen mask deployment was isolated to the aft lavatories, aft flight attendant seat, and passenger seats aft of the aft galley. No oxygen system/mask deployment cockpit indication lights illuminated. Inspection revealed 30 burnt wires in the area of a disconnect panel above the aft left lavatory. The burnt wires were attributed to chafing against the disconnect panel structure due to slack in the wires from the module blocks to a wire bundle riding against the disconnect panel. Additional inspections revealed two airplanes with chafed wires, three airplanes with wiring coming into contact with surrounding structure, and seven airplanes with slack wiring.

Chafing of wires at the disconnect panel above the aft left lavatory, if not corrected, could result in electrical arcing, and consequent fire in the cabin.

The disconnect panel above the aft left lavatory on certain McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes is identical to that on the affected Model MD–88 airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Other Relevant Rulemaking

The FAA, in conjunction with Boeing and operators of Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD80–24A184, including Appendix, dated October 26, 2000, which describes procedures for a general visual inspection of the disconnect panel area above the aft left lavatory for chafed or damaged wires or unacceptable clearance between the wires and adjacent structure; and corrective actions, if necessary. The corrective actions include securing wires using tie-wraps to obtain a 0.50-inch minimum clearance, and repairing or replacing any chafed or damaged wire with a new wire; as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 1,198 airplanes of the affected design in the worldwide fleet. The FAA estimates that 586 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $35,160, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. However, the FAA has been advised that manufacturer warranty remedies are available for some airplanes for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–166–AD.

Applicability: Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes; certificated in any category; as listed in Boeing Alert Service Bulletin MD80–24A184, dated October 26, 2000; equipped with Jamco lavatories.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by

this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of wires at the disconnect panel above the aft left lavatory, which could result in electrical arcing, and consequent fire in the cabin, accomplish the following:

Inspection and Corrective Action, If Necessary

(a) Within 120 days from the effective date of this AD, perform a general visual inspection of the disconnect panel area above the aft left lavatory for damaged or chafed wires or unacceptable clearance between the wires and structure, in accordance with Boeing Alert Service Bulletin MD80–24A184, including Appendix, dated October 26, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) Condition 1. If no damaged or chafed wire and if acceptable clearance (i.e., 0.50 inch minimum) between the wires and adjacent structure is found, no further action is required by this AD.

(2) Condition 2. If no chafed or damaged wire and if unacceptable clearance between the wires and adjacent structure is found, before further flight, secure wires using tie-wraps to obtain a 0.50-inch minimum clearance, in accordance with the service bulletin.

(3) Condition 3. If any chafed or damaged wire and unacceptable clearance between the wires and adjacent structure is found, before further flight, repair or replace any chafed or damaged wire with a new wire and secure wires using tie-wraps to obtain a 0.50-inch minimum clearance, in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Issued in Renton, Washington, on March 7, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6097 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2000–D029]

Defense Federal Acquisition Regulation Supplement; Restriction on Contingent Fees for Foreign Military Sales—Commercial Items

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause from the list of clauses included in contracts for commercial items to implement provisions of law or Executive orders. The clause proposed for removal pertains to restrictions on contingent fees for foreign military sales.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before May 13, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2000–D029 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2000–D029.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

The clause at DFARS 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items, includes a list of clauses that may be included in a contract for commercial items to implement provisions of law or Executive orders. Included on the list is the clause at DFARS 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales, which cites 22 U.S.C. 2779 as its statutory basis. However, the clause at DFARS 252.225–7027 does not implement 22 U.S.C. 2779, which requires in subsection (c) that no fee may be included in the amount paid under a contract unless the amount is reasonable, allocable, and not made to a person who has used improper influence. The clause at DFARS 252.225–7027 implements DoD policy only, requiring that, in order for the costs of certain contingent fees to be allowable, the Government must identify the fees and the foreign military sales customer must approve payment of the fees in writing before contract award. This requirement has little effect in commercial contracts where the price the Government pays is generally a fixed price, not based on cost analysis.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to 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, *et seq.*, because most firms that pay or receive contingent fees for foreign military sales are not small business concerns. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D029.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 252 as follows:

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

2. Section 252.212–7001 is amended as follows:

a. By revising the clause date to read ''(XXX 2002)'', and

b. In paragraph (b), by removing the entry ''____ 252.225–7027 Restriction on Contingent Fees for Foreign Military Sales (MAR 1998) (22 U.S.C. 2779).''.

[FR Doc. 02–5954 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. RSPA–00–8439 (HM–208D)]

RIN 2137–AD53

Hazardous Materials: Temporary Reduction of Registration Fees

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

ACTION: Notice of proposed rulemaking; status.

SUMMARY: RSPA is issuing this document to inform persons of the status of a notice of proposed rulemaking (NPRM) which it published in the **Federal Register** on December 7, 2000, proposing to: temporarily lower the registration fees paid by persons who transport or offer for transportation in commerce certain categories and quantities of hazardous materials; charge not-for-profit organizations the same registration fee as a small business; use the North American Industry Classification System for size criteria for determining if an entity is a small business; and allow payment by additional credit cards than previously authorized. Consistent with the President's Fiscal Year 2003 budget request to Congress, RSPA is further delaying final action on these proposals pending enactment of the Fiscal Year 2003 Department of Transportation appropriations. Therefore, under the existing regulations, for registration year 2002–2003, which begins July 1, 2002, the registration fees remain $300 (including a $25 processing fee) for small businesses and $2,000 (including a $25 processing fee) for all other registrants.

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366–4484, or Ms. Deborah Boothe, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On December 7, 2000 (65 FR 76889), RSPA issued a NPRM proposing to temporarily lower the registration fee for all registrants for the next six registration years (2001–2002 through 2006–2007) in order to eliminate an unexpended balance (or surplus) in the Hazardous Materials Emergency Preparedness (HMEP) grants fund. The HMEP grants program supports hazardous material emergency response planning, training and related activities by States, local governments, and Indian tribes. RSPA also proposed to charge not-for-profit organizations the same registration fee as a small business; amend its reference to the Small Business Administration's (SBA) small business criteria to reflect SBA's replacement of the Standard Industrial Classification (SIC) code system with the North American Industry Classification System; and allow payment by additional credit cards than previously authorized.

On May 2, 2001 (66 FR 22080), RSPA published a status document in the **Federal Register** stating that, consistent with the President's Fiscal Year 2002 budget request to Congress, it was delaying final action on the proposals in the NPRM pending enactment of the Fiscal Year 2002 Department of Transportation appropriations. In that budget request, the President proposed to fund a portion of RSPA's hazardous materials safety program from fees collected through the Hazardous Materials Registration program. Although that proposal was not adopted by Congress in the Fiscal Year 2002 DOT appropriations, the President's Fiscal Year 2003 budget request to Congress again proposes to fund a portion of RSPA's hazardous materials safety program budget from fees collected through the Hazardous Materials Registration program. Therefore, consistent with the President's current budget request to Congress, RSPA is again delaying final action on the proposals contained in this rulemaking to temporarily reduce registration fees pending enactment of the Fiscal Year 2003 Department of Transportation appropriations.

Consistent with current regulations, for registration year 2002–2003, which begins July 1, 2002, the registration fees remain unchanged at $300 (including a $25 processing fee) for small businesses and $2,000 (including a $25 processing fee) for all other registrants. Later this year, RSPA intends to issue a final rule on other proposals contained in the December 7, 2000 NPRM. A copy of the 2002–2003 registration form can be obtained after May 1, 2002, from our Web site at *http://hazmat.dot.gov/register.htm* and from our fax-on-demand service at 1–800–467–4922 (extension 2; document 700) .

Issued in Washington, DC, on March 8, 2002.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–6122 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 67, No. 50
Thursday, March 14, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV02–905–1]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible producers of Florida citrus fruit to determine whether they favor continuance of the marketing order regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in the production area.

DATES: The referendum will be conducted from April 4, 2002 through April 26, 2002. To vote in this referendum, growers must have been producing Florida citrus during the period August 31, 2000, through September 1, 2001.

ADDRESSES: Copies of the marketing order may be obtained from the office of the referendum agent at 799 Overlook Drive, Suite A, Winter Haven, Florida 33884, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC, 20250–0237.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, Department of Agriculture, at 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone (863) 324–3375; or Melissa Schmaedick, Marketing Order Administration Branch, Fruit & Vegetable Programs, Agricultural Marketing Service, Department of Agriculture, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 905 (7 CFR part 905), hereinafter referred to as the ''order'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by producers. The referendum shall be conducted during the period April 4, 2002 through April 26, 2002 among Florida citrus producers in the production area. Only producers that were engaged in the production of Florida citrus during the period of August 31, 2000, through September 1, 2001, may participate in the continuance referendum.

The Department of Agriculture (USDA) has determined that continuance referenda are an effective means for ascertaining whether producers favor continuation of marketing order programs. The USDA would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of Florida citrus represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the USDA will consider the results of the referendum and other relevant information regarding operation of the order. USDA will evaluate the order's relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0189 for Florida citrus. It has been estimated that it will take an average of 20 minutes for each of the approximately 11,970 producers of Florida citrus to cast a ballot. Participation is voluntary. Ballots postmarked after May 6, 2002 will not be included in the vote tabulation.

William G. Pimental and Christian D. Nissen of the Southeast Marketing Field Office, and Melissa Schmaedick of the Washington, DC Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of the USDA to conduct such referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR part 900.400 *et seq*).

Ballots will be mailed to all producers of record and may also be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, and Tangerines.

Authority: 7 U.S.C. 601–674.

Dated: March 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6108 Filed 3–13–02; 8:45 am]
BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 01–018E]

Definitions and Standards of Identity or Composition: Elimination of the Pizza Standard

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule: Reopening and extension of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reopening and extending the comment period for the proposed rulemaking, ''Definitions and Standards of Identity or Composition: Elimination of the Pizza Standard,'' that closed on January 2, 2002. This action responds to requests from two trade associations and a private company to allow additional time for comment.

DATES: Comments are due April 15, 2002.

ADDRESSES: Send one original and two copies of written comments to FSIS Docket No. 01–018P, Department of Agriculture, Food Safety and Inspection Service, Room 102, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0279

SUPPLEMENTARY INFORMATION: On November 2, 2001, FSIS published a proposed rule, ''Definitions and Standards of Identity or Composition: Elimination of the Pizza Standard'' (66 FR 55601). In that document, the Agency proposed to amend the Federal meat inspection regulations to remove the standards of identity for ''pizza with meat'' and ''pizza with sausage'' and provided a 60-day comment period ending on January 2, 2002. FSIS received three comments requesting that the Agency extend the comment period for the proposed rule. Two comments from industry trade associations requested that the Agency extend the comment period for an additional 60 days and one comment from a private company requested that the Agency extend the comment period for an additional 90 days. The commenters requested additional time to get input and feed-back from trade association members who may be affected by the proposed rule and to conduct, gather, and analyze consumer research data. Because the comment period included the holiday season, the requestors asked for additional time to accommodate loss of time during the holidays.

FSIS has considered the requests and will reopen the comment period. However, FSIS is only reopening the comment period for an additional 30 days, which will provide additional time for comments to be made, while ensuring that the rulemaking proceeds in a timely manner. As a result of this reopening and extension, the comment period for the proposed rule will close on April 15, 2002.

Additional Public Notification

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

Margaret O'K Glavin,

Acting Administrator.

[FR Doc. 02–6125 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE174; Notice No. 23–02–01–SC]

Special Conditions: Installation of Full Authority Digital Engine Control (FADEC) System on Liberty Aerospace, Model XL–2 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Liberty Aerospace, Model XL–2 Airplane, which will use a FADEC System. This airplane will have a novel or unusual design feature associated with the installation of an engine that uses an electronic engine control system in place of the engine's mechanical system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before April 15, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE174, DOT Building, 901 Locust, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE174. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin 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.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting 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 proposals described in this action 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. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this action must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE174.'' The postcard will be date stamped and returned to the commenter.

Background

On October 26, 2000, Liberty Aerospace applied for a Type Certificate for the Model XL–2 airplane. The Model XL–2 is a small, normal category airplane. The airplane is powered by one reciprocating engine equipped with an electronic engine control system with full authority capability in place of the hydromechanical control system.

Type Certification Basis

• Under the provisions of 14 CFR 21.17, Liberty Aerospace must show that the Model XL–2 meets the applicable provisions of 14 CFR part 23, as amended by Amendments 23–1 through 23.53 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the Model XL–2 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model LC40–550FG must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates 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

Liberty Aerospace, Model XL–2 Airplane will incorporate the following novel or unusual design features:

Liberty Aerospace, Model XL–2 airplane will use an engine that includes an electronic control system with full engine authority capability.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic equipment. Since the electronic engine control system used on the Liberty Aerospace, Model XL–2 will perform critical functions, provisions for protection from the effects of HIRF fields should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this Notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the ARAC Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, JAA, and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a full authority digital engine control is an example of a system that should address the HIRF environments.

Even though the control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (e.g., radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (e.g., automated cockpit powerplant controls such as mixture setting). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for the Liberty Aerospace, Model XL–2 to provide HIRF protection and to evaluate the installation of the electronic engine control system for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23–46.

Applicability

As discussed above, these special conditions are applicable to the Liberty Aerospace, Model XL–2 Airplane. Should Liberty Aerospace apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model, Liberty Aerospace, Model XL–2 Airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

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 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Liberty Aerospace, Model XL–2 Airplane.

1. *High Intensity Radiated Fields (HIRF) Protection.* In showing compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system, which performs critical functions, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) 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 external HIRF threat environment defined in the following table:

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.

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 per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 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. Data used for engine certification may be used, when appropriate, for airplane certification.

2. *Electronic Engine Control System.* The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23–46. The intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement.

Issued in Kansas City, Missouri on February 5, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6131 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–166–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81, –82, and –83 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes. This proposal would require an inspection of the disconnect panel area above the aft left lavatory for chafed or damaged wires or unacceptable clearance between the wires and adjacent structure, and corrective actions, if necessary. This action is necessary to prevent chafing of wires at the disconnect panel above the aft left lavatory, which could result in electrical arcing, and consequent fire in the cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–166–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

- Submit comments using the following format:
- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–166–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident of uncommanded deployment of the cabin oxygen masks on a McDonnell Douglas Model MD–88 airplane. This deployment occurred as the airplane was in flight climbing through 19,000 feet. The oxygen mask deployment was isolated to the aft lavatories, aft flight attendant seat, and passenger seats aft of the aft galley. No oxygen system/mask deployment cockpit indication lights illuminated. Inspection revealed 30 burnt wires in the area of a disconnect panel above the aft left lavatory. The burnt wires were attributed to chafing against the disconnect panel structure due to slack in the wires from the module blocks to a wire bundle riding against the disconnect panel. Additional inspections revealed two airplanes with chafed wires, three airplanes with wiring coming into contact with surrounding structure, and seven airplanes with slack wiring.

Chafing of wires at the disconnect panel above the aft left lavatory, if not corrected, could result in electrical arcing, and consequent fire in the cabin.

The disconnect panel above the aft left lavatory on certain McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes is identical to that on the affected Model MD–88 airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Other Relevant Rulemaking

The FAA, in conjunction with Boeing and operators of Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD80–24A184, including Appendix, dated October 26, 2000, which describes procedures for a general visual inspection of the disconnect panel area above the aft left lavatory for chafed or damaged wires or unacceptable clearance between the wires and adjacent structure; and corrective actions, if necessary. The corrective actions include securing wires using tie-wraps to obtain a 0.50-inch minimum clearance, and repairing or replacing any chafed or damaged wire with a new wire; as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 1,198 airplanes of the affected design in the worldwide fleet. The FAA estimates that 586 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $35,160, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. However, the FAA has been advised that manufacturer warranty remedies are available for some airplanes for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–166–AD.

Applicability: Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes; certificated in any category; as listed in Boeing Alert Service Bulletin MD80–24A184, dated October 26, 2000; equipped with Jamco lavatories.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by

this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of wires at the disconnect panel above the aft left lavatory, which could result in electrical arcing, and consequent fire in the cabin, accomplish the following:

Inspection and Corrective Action, If Necessary

(a) Within 120 days from the effective date of this AD, perform a general visual inspection of the disconnect panel area above the aft left lavatory for damaged or chafed wires or unacceptable clearance between the wires and structure, in accordance with Boeing Alert Service Bulletin MD80–24A184, including Appendix, dated October 26, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) Condition 1. If no damaged or chafed wire and if acceptable clearance (i.e., 0.50 inch minimum) between the wires and adjacent structure is found, no further action is required by this AD.

(2) Condition 2. If no chafed or damaged wire and if unacceptable clearance between the wires and adjacent structure is found, before further flight, secure wires using tie-wraps to obtain a 0.50-inch minimum clearance, in accordance with the service bulletin.

(3) Condition 3. If any chafed or damaged wire and unacceptable clearance between the wires and adjacent structure is found, before further flight, repair or replace any chafed or damaged wire with a new wire and secure wires using tie-wraps to obtain a 0.50-inch minimum clearance, in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Issued in Renton, Washington, on March 7, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6097 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2000–D029]

Defense Federal Acquisition Regulation Supplement; Restriction on Contingent Fees for Foreign Military Sales—Commercial Items

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause from the list of clauses included in contracts for commercial items to implement provisions of law or Executive orders. The clause proposed for removal pertains to restrictions on contingent fees for foreign military sales.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before May 13, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2000–D029 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2000–D029.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

The clause at DFARS 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items, includes a list of clauses that may be included in a contract for commercial items to implement provisions of law or Executive orders. Included on the list is the clause at DFARS 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales, which cites 22 U.S.C. 2779 as its statutory basis. However, the clause at DFARS 252.225–7027 does not implement 22 U.S.C. 2779, which requires in subsection (c) that no fee may be included in the amount paid under a contract unless the amount is reasonable, allocable, and not made to a person who has used improper influence. The clause at DFARS 252.225–7027 implements DoD policy only, requiring that, in order for the costs of certain contingent fees to be allowable, the Government must identify the fees and the foreign military sales customer must approve payment of the fees in writing before contract award. This requirement has little effect in commercial contracts where the price the Government pays is generally a fixed price, not based on cost analysis.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to 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, *et seq.*, because most firms that pay or receive contingent fees for foreign military sales are not small business concerns. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D029.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 252 as follows:

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

2. Section 252.212–7001 is amended as follows:

a. By revising the clause date to read ''(XXX 2002)'', and

b. In paragraph (b), by removing the entry ''____ 252.225–7027 Restriction on Contingent Fees for Foreign Military Sales (MAR 1998) (22 U.S.C. 2779).''.

[FR Doc. 02–5954 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. RSPA–00–8439 (HM–208D)]

RIN 2137–AD53

Hazardous Materials: Temporary Reduction of Registration Fees

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

ACTION: Notice of proposed rulemaking; status.

SUMMARY: RSPA is issuing this document to inform persons of the status of a notice of proposed rulemaking (NPRM) which it published in the **Federal Register** on December 7, 2000, proposing to: temporarily lower the registration fees paid by persons who transport or offer for transportation in commerce certain categories and quantities of hazardous materials; charge not-for-profit organizations the same registration fee as a small business; use the North American Industry Classification System for size criteria for determining if an entity is a small business; and allow payment by additional credit cards than previously authorized. Consistent with the President's Fiscal Year 2003 budget request to Congress, RSPA is further delaying final action on these proposals pending enactment of the Fiscal Year 2003 Department of Transportation appropriations. Therefore, under the existing regulations, for registration year 2002–2003, which begins July 1, 2002, the registration fees remain $300 (including a $25 processing fee) for small businesses and $2,000 (including a $25 processing fee) for all other registrants.

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366–4484, or Ms. Deborah Boothe, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On December 7, 2000 (65 FR 76889), RSPA issued a NPRM proposing to temporarily lower the registration fee for all registrants for the next six registration years (2001–2002 through 2006–2007) in order to eliminate an unexpended balance (or surplus) in the Hazardous Materials Emergency Preparedness (HMEP) grants fund. The HMEP grants program supports hazardous material emergency response planning, training and related activities by States, local governments, and Indian tribes. RSPA also proposed to charge not-for-profit organizations the same registration fee as a small business; amend its reference to the Small Business Administration's (SBA) small business criteria to reflect SBA's replacement of the Standard Industrial Classification (SIC) code system with the North American Industry Classification System; and allow payment by additional credit cards than previously authorized.

On May 2, 2001 (66 FR 22080), RSPA published a status document in the **Federal Register** stating that, consistent with the President's Fiscal Year 2002 budget request to Congress, it was delaying final action on the proposals in the NPRM pending enactment of the Fiscal Year 2002 Department of Transportation appropriations. In that budget request, the President proposed to fund a portion of RSPA's hazardous materials safety program from fees collected through the Hazardous Materials Registration program. Although that proposal was not adopted by Congress in the Fiscal Year 2002 DOT appropriations, the President's Fiscal Year 2003 budget request to Congress again proposes to fund a portion of RSPA's hazardous materials safety program budget from fees collected through the Hazardous Materials Registration program. Therefore, consistent with the President's current budget request to Congress, RSPA is again delaying final action on the proposals contained in this rulemaking to temporarily reduce registration fees pending enactment of the Fiscal Year 2003 Department of Transportation appropriations.

Consistent with current regulations, for registration year 2002–2003, which begins July 1, 2002, the registration fees remain unchanged at $300 (including a $25 processing fee) for small businesses and $2,000 (including a $25 processing fee) for all other registrants. Later this year, RSPA intends to issue a final rule on other proposals contained in the December 7, 2000 NPRM. A copy of the 2002–2003 registration form can be obtained after May 1, 2002, from our Web site at *http://hazmat.dot.gov/register.htm* and from our fax-on-demand service at 1–800–467–4922 (extension 2; document 700) .

Issued in Washington, DC, on March 8, 2002.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–6122 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 67, No. 50

Thursday, March 14, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV01–81–2NC]

Notice of Request for OMB Approval and Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the Agricultural Marketing Service (AMS) is submitting to the Office of Management and Budget (OMB) for approval and extension the information collection on prune trees grown in California per clause (3) of Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c). This information collection was approved as an emergency package through May 31, 2002, and assigned OMB No. 0581–0201.

DATES: Comments on this notice must be received by May 13, 2002.

FOR FURTHER INFORMATION CONTACT: Contact Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20090–6456; Tel: (202) 720–2491, Fax: (202) 720–8983, or E-mail: *moab.docketclerk@usda.gov.*

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: California Prune/Plum Tree Removal Program (''the program'').

OMB Number: 0581–0201.

Expiration Date of Approval: May 31, 2002.

Type of Request: Approval and extension of a currently approved information collection.

Abstract: The information collection requirements in this request are applied only to those growers who voluntarily participate in the tree removal program. The information is essential to carry out the program, and to administer release of payments to participating growers.

This program is intended to reestablish prune/plum growers' purchasing power and is authorized under clause (3) of section 32 of the Act of August 24, 1935, as amended (Section 32). Clause (3) of Section 32 authorizes USDA to ''reestablish farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption.'' Section 32 also authorizes USDA to use Section 32 funds ''* * * at such times, and in such manner, and in such amounts, as * * *'' is found to ''* * * effectuate substantial accomplishments of any one or more of the purposes of this section.'' Furthermore, ''Determinations by the Secretary as to what constitutes * * * normal production for domestic consumption shall be final.''

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of clause (3) of Section 32 and the rules and regulations issued thereunder.

The California prune industry has requested a tree removal program estimated to cost $20 million. The industry asked the Department of Agriculture (USDA) to provide $17 million in Section 32 funds. The industry has contributed $3 million. California's prune bearing acreage is expected to reach 94,000 acres next year if no acreage is removed. The industry's objective is to remove a minimum of 20,000 bearing acres of prune trees. Prune trees are generally planted 100 to 140 trees per acre. With an average yield of 2.2 tons per acre (5-year average), about 44,000 tons of prune variety plums would be removed from production under the program. Such a decrease will more closely align prune supply with demand while assuring an adequate supply for all market needs. If less productive acres are removed (yields less than 2.2 tons per acre) or less than 20,000 acres are removed, then the reduction in production would be less than 44,000 tons. With prune supplies more in line with market needs, market conditions are expected to stabilize and producer prices are expected to rise to more remunerative levels.

Two forms are needed to implement the program. The first form is ''Application for Prune Tree Removal Program'' (FV–298). Growers who wish to participate in the program must submit this form to the Prune Marketing Committee (Committee), which administers the program. Upon receipt of FV–298, the Committee will send the grower a ''Notification of Prune Tree Removal'' (FV–299) that requires only the grower's signature certifying that the trees were removed, and the date of removal. The notification also must be signed by a Committee staff member to verify actual removal of the trees. Growers are required to maintain copies of both forms for at least three years.

These forms require the minimum amount of information necessary to carry out the program. In addition, USDA has developed these forms in consultation with the Committee on behalf of the California prune industry. Because this program is not maintained by any other agency, the information collected is not available from any other existing records.

The information collected will be used only by authorized representatives of the USDA, including AMS' Fruit and Vegetable Programs' regional and headquarters staff, and authorized employees of the Committee. All information collected will be treated as confidential (as indicated on the forms), and will be in conformance with the Privacy Act and the Freedom of Information Act.

AMS estimates that the total annual burden are 250 hours. The proposed request for approval of the information collection under the program is as follows:

FV–298—Application for Prune Tree Removal Program Reporting:

Estimate of Burden per Response: 30 minutes.

Respondents: California prune growers.

Estimated Number of Respondents: 480.

Estimated Annual Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 240 hours.

Recordkeeping:

Estimate of Burden: 1.2 minutes.

Respondents: California prune growers.

Estimated Number of Respondents: 480.

Estimated Annual Time per Respondent: 1 hour.

Estimated Total Annual Burden on Respondents: 10 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of AMS, including whether the information will have practical utility; (2) the accuracy of AMS 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 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.

Comments should reference OMB No. 0581–0201 and the California Prune Tree Removal Program, and be mailed to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20090–6456; Fax (202) 720–5698; or E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at room 2525–S, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20090–6456; or telephone: (202) 720–2491.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6099 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–078–1]

Monsanto Co.; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Corn Genetically Engineered for Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Monsanto Company seeking a determination of nonregulated status for corn designated as Event MON 863, which has been genetically engineered for insect resistance. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn presents a plant pest risk. We are also making available for public comment an environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by May 13, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comments (an original and three copies) to Docket No. 00–078-l, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 00–078–1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and Docket No. 00–078–1 on the subject line.

You may read a copy of the petition for a determination of nonregulated status submitted by Monsanto Company, the environmental assessment, and any comments we receive on this notice of availability in our reading room. The reading room is located in room 1141, USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure that someone is available to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–8365. To obtain a copy of the petition or the environmental assessment, contact Ms. Kay Peterson at (301) 734–4885; e-mail: Kay.Peterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On May 17, 2001, APHIS received a petition (APHIS Petition No. 01–137–01p) from Monsanto Company (Monsanto) of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for corn (*Zea mays* L.) designated as Corn Rootworm Protected Corn Event MON 863 (MON 863), which has been genetically engineered for resistance to the larvae of certain corn rootworm (CRW) species. The Monsanto petition states that the

subject corn should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, MON 863 corn has been genetically engineered to express a Cry3Bb1 insecticidal protein derived from the common soil bacterium *Bacillus thuringiensis* subsp. *kumamotoensis (Bt kumamotoensis).* The petitioner states that the Cry3Bb1 protein is effective in controlling the larvae of CRW pests (Coleoptera, *Diabrotica* spp.). The subject corn also contains the *nptII* marker gene derived from the bacterium *Escherichia coli.* The *nptII* gene encodes neomycin phosphotransferase type II and is used as a selectable marker in the initial laboratory stages of plant cell selection. Expression of the added genes is controlled in part by gene sequences from the plant pathogens cauliflower mosaic virus and *Agrobacterium tumefaciens.* Particle gun acceleration technology was used to transfer the added genes into the recipient inbred yellow dent corn line A634.

MON 863 corn has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. This corn has been field tested since 1998 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of the subject corn, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In § 403 of the Plant Protection Act (7 U.S.C. 7701–7772), plant pest is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of a pesticide or involve a different use pattern for the pesticide, EPA must approve the new or different use. Accordingly, Monsanto has filed an application to register the active ingredient *B. thuringiensis* Cry3Bb protein and the genetic material necessary for its production in corn (66 FR 15435–1536, March 19, 2001). When the use of the pesticide on the genetically modified plant would result in an increase in the residues in a food or feed crop for which the pesticide is currently registered, or in new residues in a crop for which the pesticide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA. EPA has established an exemption from the requirement of a tolerance for residues of the *B. thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production in or on all raw agricultural commodities (66 FR 24061–24066, May 11, 2001).

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. The petitioner has completed consultation with FDA on the subject corn.

In accordance with the regulations in 7 CFR 340.6(d), we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for determination of nonregulated status from any interested person for a period of 60 days from the date of this notice. We are also soliciting written comments from interested persons on the environmental assessment (EA) prepared to provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risk associated with a proposed determination of nonregulated status for MON 863 corn. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). The petition and the EA, and any comments received on these documents, are available for public review, and copies of the petition and the EA may be ordered (see the **FOR FURTHER INFORMATION CONTACT** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. After reviewing and evaluating the comments on the petition and the EA and other data and information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Monsanto's insect-resistant MON 863 corn and the availability of APHIS' written decision.

Authority: 7 U.S.C. 166, 1622n, 7756, and 7761–7772; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 7th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6135 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Agricultural Management Assistance

AGENCY: Commodity Credit Corporation, United States Department of Agriculture.

ACTION: Notice of availability of program funds for Agricultural Management Assistance.

SUMMARY: This notice announces the availability of funds for Agricultural Management Assistance (AMA) to implement Section 524(b) of the Federal Crop Insurance Act, 7 U.S.C. 1524(b), as added by Section 133 of the Agricultural Risk Protection Act of 2000, Public Law 106–224. The Commodity Credit Corporation (CCC) administers the funds under the general supervision of a Vice President of the CCC who is the Chief of the Natural Resources Conservation Service (NRCS). CCC is

announcing the availability of funds under Section 524(b) of the Federal Crop Insurance Act. Section 524(b) authorizes the Secretary of Agriculture to use $10 million of CCC funds annually for cost-share assistance to producers in 15 States in which participation in the Federal Crop Insurance Program is historically low. The 15 States include Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. The cost-share assistance will encourage and assist producers in the selected States to adopt natural resources conservation practices and investment strategies that will reduce or mitigate risks to their agricultural enterprises.

DATES: March 14, 2002 to September 30, 2002.

ADDRESSES: Address all comments to: Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890.

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, Director, or Gary Gross, AMA Program Manager, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013, (202) 720–1845, fax: 202–720–4265; Submit electronic comments to: *mark.berkland@usda.gov or gary.gross@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 524(b) of the Federal Crop Insurance Act, 7 U.S.C. 1524(b), was added by Section 133 of the Agricultural Risk Protection Act of 2000, (Pub. L. 106–224, June 22, 2000). Section 524(b) authorizes the Secretary of Agriculture (Secretary) to use $10 million of CCC funds for cost-share assistance in 15 States where participation in the Federal Crop Insurance program is historically low. The 15 States designated by the Secretary are Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. The Risk Management Agency (RMA), Agricultural Marketing Service (AMS), and NRCS will administer the funds in such amounts per agency as determined by the Secretary.

Section 524(b)(2)(A), (B), and (C), provides for cost-share assistance to producers to: construct or improve water management structures or irrigation structures; plant trees for windbreaks or improve water quality; and mitigate risks through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic farming.

Section 524(b)(2)(D) and (E), provides for cost-share assistance to producers to: enter into futures, hedging, or options contracts in a manner designed to help reduce production, price, or revenue risk; and enter into agricultural trade options as a hedging transaction to reduce production, price, or revenue risk.

This notice deals with the funding administered by NRCS, approximately $7 million in fiscal year 2002, to carry out the conservation provisions of Section 524(b)(2)(A),(B), and (C).

The Chief of NRCS, on behalf of CCC, will determine the funds available to the States for financial and technical assistance.

The NRCS State Conservationist, in consultation with the State Technical Committee, will determine eligible practices using a locally led process. Eligible conservation practices will be those practices that improve soil or water management or water quality, or mitigate financial risk through resource conservation. AMA does not provide for incentive payments.

There will be a continuous signup period, with ranking cutoff dates as determined by the State Conservationist in consultation with the State Technical Committee.

The State Conservationist, in consultation with the State Technical Committee, will select applications based on State-developed ranking criteria and a ranking process, taking into account local and state priorities. The State Conservationist may also delegate the selection of applications to the local designated conservationist who will work in consultation with the local USDA Work Group.

AMA Requirements

CCC will accept applications throughout the year. The State Conservationist, in consultation with the State Technical Committee, will widely distribute information on the availability of assistance and the State-specific goals. Information will be provided that explains the process to request assistance.

Applicants must own or control the land for which assistance is being sought and agree to implement specific eligible conservation practices on the land. The applicants must meet the definition of ''person'' as set out in Section 1001(5), of the Food Security Act, 7 U.S.C. 1308(5), as determined by the Farm Service Agency (FSA). Any cooperative association of producers that markets commodities for producers shall not be considered to be a person eligible for payment. The status of an individual or entity on the date of the application shall be the basis on which the determination of the number of persons involved in the farming operation is made. There will be a 5 to 10 year cost-share agreement period to install eligible practices. Cost-share practices need to be maintained for the life of the practice. The maximum payment to any one person under the AMA program is $50,000 for any fiscal year.

The Federal share of cost-share payments shall be 75 percent of the cost of an eligible practice(s), based on percent of actual cost, percent of actual cost with not-to-exceed limits, flat rates, or average costs. Producers will be paid upon certification of the completion of the approved practice(s). Producers may contribute to the application of a cost-share practice through in-kind contributions. Eligible in-kind contributions include: personal labor; use of personal equipment; donated labor or materials; and use of on-hand or used materials that meet the requirements for the practice to be installed. In no instance shall the total financial contributions for an eligible practice from all public and private entity sources exceed 100 percent of the actual cost of the practice. Cost-share payments will not be made to a participant who has applied or initiated the application of a conservation practice prior to approval of the cost-share agreement.

Eligible participants must have control of the land for the life of the cost-share agreement period. An exception may be made by the Chief of NRCS in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief of NRCS determines that there is sufficient assurance of control; or the applicant is a tenant of the land involved in agricultural production and the applicant provides CCC with the written concurrence of the landowner in order to apply an eligible practice(s).

Eligible land includes land used as agricultural land on which NRCS determines that assistance is needed to construct or improve watershed management structures or irrigation structures; plant trees to form windbreaks or to improve water quality; or to mitigate financial risk through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic

farming. Additionally, land may only be considered for enrollment in AMA if NRCS determines that the land is privately-owned or publicly-owned where the land is under private control for the length of the cost-share agreement and is included in the participant's operating unit. The conservation practices installed on public land must contribute to an improvement in the identified natural resource concern as well as benefit private land. The applicant must provide CCC with written authorization from the government landowner to apply the conservation practices. Land that is Federally recognized Tribal, BIA allotted, or Indian trust land may be considered for enrollment in AMA.

Applicants must submit an application (CCC–1200 form) to CCC to be considered for participation in AMA. Any producer who has eligible land may obtain and submit an application for participation in AMA at a USDA service center. Producers who are members of a joint operation shall file a single application for the joint operation. A NRCS conservationist will work with the applicant to collect the information necessary to evaluate the application using the State-developed ranking criteria.

Conservation Plan Requirement

A conservation plan is required for the area to be included in the AMA cost-share agreement and becomes the basis for developing the cost-share agreement. The conservation plan must be acceptable to NRCS; be approved by the local conservation district; be signed by the participant, designated conservationist, and the conservation district; and clearly identify the conservation practices that will be cost-shared with AMA funds and the non-cost shared practices needed in the conservation plan.

Cost-Share Agreement Requirements

Participants will enter into a cost-share agreement agreeing to implement eligible conservation practices. An AMA cost-share agreement will incorporate by reference all portions of a unit applicable to AMA and be for a duration of 5 to 10 years.

Cost-share agreements will incorporate all provisions as required by law or statute, including requirements to not conduct any practices on the farm or ranch unit of concern that would tend to defeat the purposes of the cost-share agreement; refund to CCC any AMA payments received with interest, and forfeit any future payments under AMA, on the violation of a term or condition of the cost-share agreement; refund all AMA payments received on the transfer of the right and interest of the producer in land subject to the cost-share agreement, unless the transferee of the right and interest agrees to assume all obligations of the cost-share agreement; and supply information as required by CCC to determine compliance with the cost-share agreement and requirements of AMA. The participant and NRCS must certify that a conservation practice is completed in accordance with the cost-share agreement before CCC will approve any cost-share payments.

With respect to land under an AMA cost-share agreement which is inherited during the cost-share agreement period, the $50,000 per fiscal year limitation to any person will not apply to the extent that the payments from any cost-share agreements on the inherited land cause an heir, who was party to an AMA cost-share agreement on other lands prior to the inheritance, to exceed the annual limit.

With regard to cost-share agreements on tribal land, Indian trust land, or BIA allotted land, payments exceeding $50,000 per fiscal year limitation may be made to the tribal venture if an official of the BIA or tribal official certifies in writing that no one person directly or indirectly will receive more than the fiscal year limitation.

Conservation Practice Operation and Maintenance

The cost-share agreement will provide for the operation and maintenance of the conservation practices applied under the cost-share agreement. The participant will operate and maintain the conservation practices for their intended purposes as agreed-to as part of the cost-share agreement, and form CCC–1245, Practice Approval and Payment Application.

Additional Requirements and Information

Additional requirements and information pertaining to the AMA program relating to cost-share agreements, administrative requirements, and other matters can be found on CCC form CCC–1200, Conservation Program Contract, and the appendix to form CCC–1200, both of which are available at local USDA service centers.

Civil Rights

NRCS and CCC have collected civil rights data on farmers/ranchers participating in conservation programs. Based on past participation, it is estimated that the funding being made available with this notice will not negatively or disproportionately affect minorities, women, or persons with disabilities who are program beneficiaries or applicants for program benefits in NRCS or CCC assisted programs.

Environmental Evaluation

This assistance, administered by NRCS, will be funded at a level for 2002 as determined by the Secretary. Depending on the level of funding, and based on the participation in existing soil and water conservation programs, it is estimated that this assistance could result in approximately 230 cost-share agreements in the 15 States. On each farm or ranch, during the conservation planning process, the environmental effects of any proposed actions are evaluated on a case by case basis. That evaluation is used to determine whether further environmental analysis is required. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared for this notice.

Signed in Washington, DC, on August 23, 2001.

Thomas A. Weber,

Deputy Chief for Programs, Natural Resources Conservation Service.

[FR Doc. 02–6171 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Public Law 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Sierra and Sequoia National Forests' Resource Advisory Committee (RAC) for Fresno County will meet on March 19, 2002, 6:30–9:30 p.m. The Fresno County Resource Advisory Committee will meet at the Districts Ranger's office Prather, CA. The purpose of the meeting is for the Resource Advisory Committee to receive project proposals for recommendations to the Forest Supervisor for expenditure of Fresno County Title II funds.

DATES: The Fresno RAC meeting will be held on March 19, 2002. The meeting will be held from 6:30 p.m. to 9:30 p.m.

ADDRESSES: The Fresno County RAC meeting will be held at the Sierra

National Forest, Pineridge/Kings River Districts Ranger office, 29688 Auberry Road, Prather, CA.

FOR FURTHER INFORMATION CONTACT: Sue Exline, USDA, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93611. (559) 297–0706 ext. 4804; E-MAIL *skexline@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review and approve the March 19, 2002 meeting notes; (2) Discuss new business of the RAC if applicable; (3) Consideration of Title II Project proposals from the public and/or the RAC members; (4) Determine the date and location of the next meeting; (5) Public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 1, 2002.

Nancy Fleenor,

Ecosystem Coordinator.

[FR Doc. 02–6105 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Public Rights-of-Way Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) established a Public Rights-of-Way Access Advisory Committee (Committee) to assist the Board in developing a proposed rule on accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. This document announces the next meeting of the technical assistance sub-committee of that Committee, which will be open to the public.

DATES: The meeting of the sub-committee is scheduled for April 4, 2002 (beginning at 9 a.m. and ending at 5 p.m.) and April 5, 2002 (beginning at 9 a.m. and ending at 12:30 p.m.).

ADDRESSES: The meeting will be held at the Marriott Riverwalk, 711 East Riverwalk, San Antonio, TX 78205.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 125 (Voice); (202) 272–5449 (TTY). E-mail *windley@access-board.gov.* This document is available in alternate formats (cassette tape, Braille, large print, or ASCII disk) upon request. This document is also available on the Board's Internet site (*http://www.access-board.gov/prowmtg.htm*).

SUPPLEMENTARY INFORMATION: On October 20, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a notice appointing members to a Public Rights-of-Way Access Advisory Committee (Committee). 64 FR 56482 (October 20, 1999). The objectives of the Committee include providing recommendations for developing a proposed rule addressing accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968, recommendations regarding technical assistance issues, and guidance for best practices for alterations in the public rights-of-way.

On January 10, 2001, the Committee presented its recommendations on accessible public rights-of-way in a report entitled ''Building a True Community''. The report is available on the Access Board's Web site at *www.access-board.gov* or can be ordered by calling the Access Board at (800) 872–2253 (voice) or (800) 993–2822 (TTY).

At its April meeting, the technical assistance sub-committee will continue to address the development and format of technical assistance materials relating to public rights-of-way. The sub-committee meeting will be open to the public and interested persons can attend the meeting and participate on subcommittees of the Committee. All interested persons will have the opportunity to comment when the proposed accessibility guidelines for public rights-of-way are issued in the **Federal Register** by the Access Board.

Individuals who require sign language interpreters or real-time captioning systems should contact Scott Windley by March 20, 2002. Notices of future meetings will be published in the **Federal Register**.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 02–6112 Filed 3–13–02; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils from the People's Republic of China: Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty New Shipper Review of Certain Cased Pencils from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is rescinding the antidumping duty new shipper review, requested by Wuxi Andi Civilization PE Gift Give Away Co., Ltd. (Wuxi or respondent), the exporter, and Safety Touch & Javithon Inc., (Safety Touch) the importer, of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC). The period of the requested review is December 1, 2000 through May 31, 2001.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: John Conniff or Paul Stoltz, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1009 and (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2000).

Background

On December 3, 2001, counsel for the respondent notified the Department that it was withdrawing its representation. Counsel instructed the Department to direct all correspondence, questions and inquiries to Safety Touch. On January 23, 2002, the Department notified the petitioner and Safety Touch of the preliminary rescission of the instant new shipper review. On January 28, 2002, the Department published its preliminary rescission in the Federal

Register. See Certain Cased Pencils from the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Review, 67 FR 3878 (January 28, 2002). In that notice, we invited interested parties to comment on the preliminary rescission within 21 days of the date of publication of the notice. Interested parties also were notified that they may request a hearing in this review within 30 days of publication of the preliminary results.

Scope of the Review

Imports covered by this review are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks. Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Changes Since the Preliminary Results

The time limits for submitting comments and requesting a hearing have passed without the Department receiving either comments or hearing requests. We have not changed our preliminary position with respect to rescission of this review. Thus, the Department is rescinding this new shipper review.

This new shipper review and this notice are issued and published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

March 5, 2002

Bernard T. Carreau,

Deputy Assistant Secretary Import Administration, Group II.

[FR Doc. 02–6178 Filed 3–13–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Granular Polytetrafluoroethylene (PTFE) Resin from Italy: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Victoria Schepker or Constance Handley, Office 5, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–1756 or (202) 482–0631, respectively.

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 an administrative review within 245 days after the last day of the anniversary month of an order 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 the 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 publication of the preliminary results.

Background

On September 24, 2001, the Department published a notice of initiation of administrative review of the antidumping order on PTFE resin from Italy, covering the period August 1, 2000, through July 31, 2001 (66 FR 49924). The preliminary results are currently due no later than May 3, 2002.

Extension of 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, we are extending the time limit for completion of the preliminary results until no later than September 3, 2002. See Decision Memorandum from Gary Taverman to Bernard T. Carreau, dated March 7, 2002, 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 notice of preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act.

March 7, 2002

Bernard T. Carreau,

Deputy Assistant SecretaryImport Administration.

[FR Doc. 02–6177 Filed 3–13–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil: Rescission of Administrative Review of the Agreement Suspending the Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On August 20, 2001, in response to a request made by Bethlehem Steel Corporation, LTV Steel Company Inc., National Steel Corporation, and United States Steel LLC (''Domestic Producers''), the Department of Commerce (''the Department'') published in the **Federal Register** (66 FR 43570) a notice announcing the initiation of an administrative review of the agreement suspending the antidumping duty investigation on certain hot-rolled flat-rolled carbon quality steel products from Brazil. The review period is July 1, 2000 to June 30, 2001. This review has now been rescinded because Domestic Producers have withdrawn their request for review.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, 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) 482–1394.

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 references to the provisions codified at 19 CFR part 351 (2001).

Scope of the Review

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%	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 .... A1 ..... 0.01–0.07%	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/mm² and 640 N/mm² and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² 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.

Background

On July 31, 2001, Domestic Producers, as Petitioners in the suspended investigation, requested an administrative review of the agreement suspending the antidumping duty investigation on hot-rolled flat-rolled carbon quality steel from Brazil published in the **Federal Register** on July 19, 1999 (64 FR 38792). On August 20, 2001, the Department published in the **Federal Register** (66 FR 43570) a notice of ''Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part'' initiating the administrative review. On February 19, 2002, Domestic Producers withdrew their request for the review. The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. Additionally, the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. Given that we have received no submissions opposing Domestic Producers' request for withdrawal of the administrative review and the Department terminated the suspension agreement in the first administrative review of the suspension agreement, we find it reasonable to extend the time period for filing a withdrawal request. Based upon Domestic Producers' request, therefore, we are rescinding this review of the agreement suspending the antidumping duty investigation on hot-rolled flat-rolled carbon quality steel from Brazil covering the period July 1, 2000 through June 30, 2001.

This notice is issued and published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: March 6, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–6175 Filed 3–13–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain–on–Steel Cookware from Mexico: Notice of Extension of Time Limit for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, United States Department of Commerce.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor at (202) 482–4929 or (202) 482–4007, respectively, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230.

POSTPONEMENT OF FINAL RESULTS OF ADMINISTRATIVE REVIEW:

The Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on Porcelain–on–Steel Cookware from Mexico on November 13, 2001 (66 FR 56799). The current deadline for the final results in this review is March 13, 2002. In accordance with section 751(a)(3)(A) of the Tariff Act of 1930 (''the Act''), as amended, the Department finds that it is not practicable to complete this administrative review within the original time frame because it is conducting a changed–circumstances antidumping duty administrative review in which it is considering revoking the order on porcelain–on–steel cookware from Mexico and rescinding this administrative review. Thus, the Department is extending the time limit for completion of the final results until May 12, 2002, which is 180 days after the date on which notice of the preliminary results was published in the Federal Register.

March 8, 2002

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–6174 Filed 3–13–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Potassium Permanganate From the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit For Final Results of Antidumping Duty New Shipper Review.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: John Conniff at (202) 482–1009 or Chris Brady at (202) 482–4406, Office of AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a final determination within 90 days after the date on which the preliminary determination is issued. However, if the Department concludes that the case is extraordinarily complicated, it may extend the 90–day period to 150 days.

Background

On March 8, 2001, the Department published a notice of initiation of a new shipper review of the antidumping duty order on potassium permanganate from the People's Republic of China (PRC) covering the period of January 1, 2000, through December 31, 2000 (66 FR 13895). On January 3, 2002, the Department published the preliminary results of its antidumping duty new shipper review (67 FR 303). In our notice of preliminary results, we stated our intention to issue the final results of this new shipper review within 90 days from the date of the preliminary results unless the time limit is extended.

Extension of Time Limit For Final Results of Review

Based on a number of complex factual issues in the preliminary results, we have determined that additional time is needed in order to complete the final results of this review. Therefore, the Department is extending the time limit for completion of the final results until no later than May 25, 2002. *See* 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 main Commerce building.

This extension is in accordance with section 751(a)(2)(B)(iv) of the Act.

March 7, 2002

Bernard T. Carreau,

Deputy Assistant Secretaryfor Import Administration, Group II.

[FR Doc. 02–6176 Filed 3–13–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On January 17, 2002, CEMEX, S.A. de C.V. (''CEMEX'') filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Dismissal of the Request for Institution of a Section 751(b) review of the Sunset decision made by the International Trade Commission, respecting Gray Portland Cement and Clinker from Mexico. This determination was published in the **Federal Register** (66 FR 65740) on December 20, 2001. The NAFTA Secretariat has assigned Case Number USA-MEX–2002–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on January 17, 2002, requesting panel review of the Dismissal of the Request for Institution of a Section 751(b) review of the Sunset decision described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is February 18, 2002);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is March 4, 2002); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: January 22, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–6106 Filed 3–13–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Secretary of Defense's Historical Records Declassification Advisory Panel

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of the forthcoming meeting of the Historical Records Declassification Advisory Panel

(HRDAP). The purpose of this meeting is to discuss and form recommendations to the Secretary of Defense on issues involving the declassification and management of DoD classified historical documents. This is the first meeting held in 2002. The OSD Historian will chair this meeting.

DATES: Friday, March 29, 2002.

TIME: The meeting is scheduled 9 a.m. to 3 p.m.

ADDRESSES: 1777 Kent Street, Arlington (Rosslyn), VA, Room 005, 14th Floor, Penthouse Conference Area.

FOR FURTHER INFORMATION CONTACT: Ms. Chris Bromwell, Office of the Deputy Assistant Secretary of Defense (Security and Information Operations), Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence), 6000 Defense Pentagon, Washington, DC 20302–6000, telephone (703) 697–1988.

Dated: March 7, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–6116 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Intelligence in Support of War on Terrorism will meet in closed session on April 22–23, 2002; May 20–21, 2002; and June 17–18, 2002, in the Pentagon. The Task Force will identify capabilities, technologies and approaches for strengthening intelligence in support of the war against terrorism.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will address capabilities and approaches for achieving early indications and warning of terrorist capabilities and intentions, providing effective operational and tactical intelligence in support of crisis operations against terrorists, and the capability for attribution of attackers, should a terrorist event occur. The Task Force will also consider promising new capabilities facilitated by recent changes in statutes (*e.g.,* Combating Terrorism Act of 2001).

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: March 8, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 02–6115 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Special Operations and Joint Forces in Support of Countering Terrorism will meet in closed session on April 16–17, 2002, at SAIC, 4001 N. Fairfax Drive, Arlington, VA; May 13–14, 2002, at the Joint Forces Command and the Training & Doctrine Command in Hampton, VA; May 22–23, 2002, at US Central Command and US Special Operations Command in Tampa, FL; and July 16–17, 2002, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. This Task Force will review all elements of the future joint force, including Special Operation Forces that can contribute to military campaigns.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will address how to: enhance and best integrate information, maneuver and fires (kinetic and other, lethal and otherwise); deploy, sustain and protect the joint force in these missions, particularly in remote locations and in the face of counter-access measures; and, exploit and leverage the contributions of coalition partners both traditional (*e.g.*, NATO allies) and non-traditional (*e.g.*, the Afghan Northern Alliance). The Task Force will recommend steps to pursue and implement the new and enhanced operational capabilities it identifies. These steps will include initiatives for technology, systems, doctrine, organization, training, leader development, experiments and demonstrations, modeling and simulation tools and facilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these matters will be closed to the public.

Dated: March 8, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–6117 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice to alter systems of records.

SUMMARY: The Department of the Air Force is proposing to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration revises the purposes for releasing records under the routine uses.

DATES: This proposed action will be effective without further notice on April 15, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, AF-CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was

submitted on March 5, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 8, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F051 AFJA D

SYSTEM NAME:

Patent Infringement and Litigation Records (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete last sentence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry 'Air Force Instruction 51–301, Intellectual Property—Patents, Patent Related Matters, Trademarks and Copyrights.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with 'In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Patent Office to the extent such disclosures are necessary for the processing and verification of patent applications.

To the Department of Justice for the purpose of asserting and defending patent infringement action.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.'

* * * * *

STORAGE:

Delete entry and replace with 'Case files are maintained in file folders. Correspondence and other data generated by the agency may be maintained in computer files. Information from case files may be extracted and entered into a database used to store general information for management purposes.'

SAFEGUARDS:

Add to entry 'Those records in computer storage devices are protected by computer system software.'

* * * * *

F051 AFJA D

SYSTEM NAME:

Patent Infringement and Litigation Records.

SYSTEM LOCATION:

Air Force Legal Services Agency, Commercial Litigation Division (AFLSA/JACN), 1501 Wilson Blvd, Suite 606, Arlington, VA 22209–2403, and

Air Force Materiel Command, Directorate of Intellectual Property Law (AFMC LA/JAZ), 2240 B Street, Room 100, Wright-Patterson Air Force Base, OH 45433–7109.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All claimants or petitioners who have alleged unlicensed use of their patents by the Air Force or who have brought suit against the United States concerning patent, trademark or copyright matters related to the Department of the Air Force.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters; messages; forms; reports; contracts; bids; photographs; legal opinions; petitions; answers; discovery documents; memoranda; infringement studies; validity studies; procurement information; license agreements; other documents including but not limited to: Contract determinations, witness statements, and engineering and technical reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2386, Copyrights, patents, designs; 22 U.S.C. 2356, Foreign Assistance, acquisition; 28 U.S.C. 1498, Patent and copyright cases; 35 U.S.C. 183, Right to compensation; and Air Force Instruction 51–301, Intellectual Property—Patents, Patent Related Matters, Trademarks and Copyrights.

PURPOSE(S):

Purpose of the collection of information is to enable the United States and its officers and employees to investigate claims and/or defend the legal interests of the United States because of claims for compensation and litigation involving patent, trademark and copyright matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Patent Office to the extent such disclosures are necessary for the processing and verification of patent applications.

To the Department of Justice for the purpose of asserting and defending patent infringement action.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case files are maintained in file folders. Correspondence and other data generated by the agency may be maintained in computer files. Information from case files may be extracted and entered into a database used to store general information for management purposes.

RETRIEVABILITY:

Retrievable by name of claimant or litigant.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties, and who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets/safes and controlled by personnel screening. Those records in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files for three years after end of year in which the case was closed, then retired to Washington National Records Center, Washington, DC 20409, for retention up to twelve years thereafter, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Records in computer storage are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Commercial Litigation Division, Directorate of Civil Law, Air Force Legal Services Agency (AFLSA/JACN), 1501 Wilson Boulevard, Suite 606, Arlington, VA 22209–2403.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should

address written inquiries to or visit the Air Force Legal Services Agency, Directorate of Civil Law, Commercial Litigation Division (AFLSA/JACN), 1501 Wilson Boulevard, Suite 606, Arlington, VA 22209–2403.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves in this system should address written inquiries to or visit the Air Force Legal Services Agency, Directorate of Civil Law, Commercial Litigation Division (AFLSA/JACN), 1501 Wilson Blvd, Suite 606, Arlington, VA 22209–2403.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information received from the individual, contractors, other government agencies, individual corporations (non-contractors) and from source documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–6114 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 1, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before May 13, 2002.

ADDRESSES: Written comments regarding the emergency review 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 10235, 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 Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED 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 respondents, including through the use of information technology.

Dated: March 11, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of English Language Acquisition

Type of Review: Reinstatement.

Title: Application for Grants under School Improvement: Elementary School Foreign Language Incentive Program.

Abstract: This application is used by public elementary schools and local education agencies to apply for formula grants authorized under the Elementary School Foreign Language Incentive Program.

Additional Information: The Elementary School Foreign Language Incentive Program is an incentive payment program, authorized in Section 5494, Subpart 9 of Part D of Title V of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. The purpose of the Foreign Language Incentive Program is to provide incentive payments to public elementary schools that provide students attending such a school a program designed to lead to communicative competency in a foreign language.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 300

Burden Hours: 7,650.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651, *vivian.reese@ed.gov,* or should be electronically mailed to the internet address *OCIO_RIMG@ed.gov,* or should be faxed to 202–708–9346.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–6170 Filed 3–13–02; 8:45 am]

BILLING CODE 4000–01–P1

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education, Department of Education

ACTION: Notice of meeting.

SUMMARY: This notice provides the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10 (a)(2) of the Federal Advisory Committee Act. This notice is

published less than 15 days prior to the date of the meeting as a result of special administrative clearances.

DATE AND TIME: March 22, 2002, 9 a.m. to 3:30 p.m.

ADDRESSES: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036. Telephone: (202) 223–0200.

FOR FURTHER INFORMATION CONTACT: Donald Fischer, U.S. Department of Education, 1990 K Street NW., Washington, DC 20006–8544. Telephone: (202) 502–7500 or by e-mail: *donald_fischer@ed.gov* Individuals who use a telecommunication 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).

The meeting site is accessible to individuals with disabilities. Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Title VII, Part B, Section 742 of the Higher Education Amendments of 1998 (20 U.S.C. 1138a). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and procedures for grant awards.

The meeting of the National Board is open to the public. The National Board will meet on Friday, March 22, 2002, from 9 a.m. to 3:30 p.m. to discuss the Fund's programs and special initiatives.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, 8th Floor, 1990 K Street NW., Washington, DC 20006–8544 from the hours of 8 a.m. to 4:30 p.m.

Dated: March 8, 2002.

Kenneth W. Tolo,

Acting Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education.

[FR Doc. 02–6152 Filed 3–13–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–404–003]

Northern Natural Gas Company; Notice of Compliance Filing

March 8, 2002.

Take notice that on March 1, 2002, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Revised Volume No. 2, the following tariff sheets in compliance with the Commission's Order dated February 1, 2002:

Fifth Revised Volume No. 1

1st Revised 58 Revised Sheet No. 50
Substitute 59 Revised Sheet No. 50
Substitute 60 Revised Sheet No. 50
First Revised 59 Revised Sheet No. 51
Substitute 60 Revised Sheet No.51
Substitute 61 Revised Sheet No.51
1 Revised 26 Revised Sheet No. 52
Substitute 27 Revised Sheet No. 52
1 Revised 55 Revised Sheet No. 53
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Substitute 57 Revised Sheet No. 53
1 Revised Eighth Revised Sheet No. 56
Substitute Ninth Revised Sheet No. 56
Substitute 10 Revised Sheet No. 56
1 Revised 19 Revised Sheet No. 59
1 Revised Third Revised Sheet No. 59A
First Revised 22 Revised Sheet No. 60
1 Revised Third Revised Sheet No. 60A
Ninth Revised Sheet No. 263
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Original Sheet No. 268A
Second Revised Sheet No. 269A

Original Revised Volume No. 2

First Revised 166 Revised Sheet No. 1C
Substitute 167 Revised Sheet No. 1C

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6102 Filed 3–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2262–002, et al.]

Frederickson Power L.P., et al.; Electric Rate and Corporate Regulation Filings

March 7, 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. Frederickson Power L.P.

[Docket No. ER01–2262–002]

Take notice that on February 28, 2002, Frederickson Power L.P. (Frederickson Power) filed a notice of change of status and a Code of Conduct respecting Frederickson Power's pending affiliation with Duke Energy Corporation.

Comment Date: March 21, 2002.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1188–000]

Take notice that on March 1, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Ameren Energy, Inc.

A copy of this filing was sent to Ameren Energy, Inc.

Comment Date: March 22, 2002.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1189–000]

Take notice that on March 1, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System

Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Constellation Power Source, Inc.

A copy of this filing was sent to Constellation Power Source, Inc.

Comment Date: March 22, 2002.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1190–000]

Take notice that on March 1, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Consumers Energy Company d/b/a/ Consumers Energy Traders.

A copy of this filing was sent to Consumers Energy Company d/b/a/ Consumers Energy Traders.

Comment Date: March 22, 2002.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1191–000]

Take notice that on March 1, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by DTE Energy Trading, Inc.

A copy of this filing was sent to DTE Energy Trading, Inc.

Comment Date: March 22, 2002.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1192–000]

Take notice that on March 1, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Dynegy Energy Services, Inc.

A copy of this filing was sent to Dynegy Energy Services, Inc.

Comment Date: March 22, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1193–000]

Take notice that on March 1, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by El Paso Merchant Energy, L.P.

A copy of this filing was sent to El Paso Merchant Energy, L.P.

Comment Date: March 22, 2002.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1194–000]

Take notice that on March 1, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by enXco, Inc.

A copy of this filing was sent to enXco, Inc.

Comment Date: March 22, 2002.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1195–000]

Take notice that on March 1, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Minnesota Power-MPEX.

A copy of this filing was sent to Minnesota Power-MPEX.

Comment Date: March 22, 2002.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1196–000]

Take notice that on March 1, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Mirant Americas Energy Marketing, LP.

A copy of this filing was sent to Mirant Americas Energy Marketing, LP.

Comment Date: March 22, 2002.

11. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1197–000]

Take notice that on March 1, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Rainbow Energy Marketing Corporation.

A copy of this filing was sent to Rainbow Energy Marketing Corporation.

Comment Date: March 22, 2002.

12. Cinergy Services, Inc.

[Docket No. ER02–1198–000]

Take notice that on March 1, 2002, Cinergy Services, Inc. (Cinergy) and Baltimore Gas and Electric Company are requesting a cancellation of Service Agreement No.4, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.6.

Cinergy requests an effective date of March 4, 2002.

Comment Date: March 22, 2002.

13. Cinergy Services, Inc.

[Docket No. ER02–1199–000]

Take notice that on March 1, 2002, Cinergy Services, Inc. (Cinergy) and Baltimore Gas and Electric Company are requesting a cancellation of Service Agreement No.4, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.7.

Cinergy requests an effective date of March 4, 2002.

14. Cinergy Services, Inc.

[Docket No. ER02–1200–000]

Take notice that on March 1, 2002, Cinergy Services, Inc. (Cinergy) and Baltimore Gas and Electric Company are requesting a cancellation of Service Agreement No.18, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.8.

Cinergy requests an effective date of March 4, 2002.

Comment Date: March 22, 2002.

15. Cinergy Services, Inc.

[Docket No. ER02–1201–000]

Take notice that on March 1, 2002, Cinergy Services, Inc. (Cinergy) and Baltimore Gas and Electric Company are requesting a cancellation of Service Agreement No.154, under Cinergy Operating Companies, FERC Electric

Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.7.

Cinergy requests an effective date of March 4, 2002.

Comment Date: March 22, 2002.

16. Cinergy Services, Inc.

[Docket No. ER02–1202–000]

Take notice that on March 1, 2002, Cinergy Services, Inc. (Cinergy) and Baltimore Gas and Electric Company are requesting a cancellation of Service Agreement No.154, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.6.

Cinergy requests an effective date of March 4, 2002.

Comment Date: March 22, 2002.

17. Ameren Energy, Inc. on Behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–1203–000]

Take notice that on March 1, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 USC 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into *Engage Energy America LLC.* Ameren Energy seeks Commission acceptance of these service agreements effective January 1, 2002.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Comment Date: March 22, 2002.

18. Ameren Energy, Inc. on Behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–1204–000]

Take notice that on March 1, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 USC 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with *Wisconsin Electric Power Company.* Ameren Energy seeks Commission acceptance of these service agreements effective December 21, 2001.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Comment Date: March 22, 2002.

19. PJM Interconnection, L.L.C.

[Docket No. ER02–1205–000]

Take notice that on March 1, 2002, PJM Interconnection, L.L.C. (PJM), filed amendments to the PJM Open Access Transmission Tariff and the Amended and Restated PJM Operating Agreement to implement it Emergency Load Response Program on a permanent basis. Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

PJM requests an effective date of June 1, 2002 for the amendments.

Comment Date: March 22, 2002.

20. New England Power Pool

[Docket No. ER02–1206–000]

Take notice that on March 1, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials (1) to permit NEPOOL to expand its membership to include Sprague Energy Corp. (Sprague); and (2) to terminate the memberships of Niagra Mohawk Energy Inc. (NIMO) and Amerada Hess Corporation (Hess). The Participants Committee requests an effective date of March 1, 2002 for commencement of participation in NEPOOL by Sprague and December 31, 2001 and February 1, 2002 for the terminations of NIMO and Hess, respectively.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: March 22, 2002.

21. New England Power Pool

[Docket No. ER02–1207–000]

Take notice that on March 1, 2001, the New England Power Pool (NEPOOL) Participants Committee tendered for filing a Service Agreement for Regional Network Service, including Network Integration Transmission Service pursuant to section 205 of the Federal Power Act and 18 CFR35.12 of the Commission's regulations. Acceptance of this Service Agreement will recognize the provision of Regional Network Service to Miller Hydro Group, in accordance with the provisions of the Restated NEPOOL Open Access Transmission Tariff, as amended and supplemented. An effective date of February 1, 2002 for commencement of transmission service has been requested.

Copies of this filing were sent to the NEPOOL Participants, the New England state governors and regulatory commissions, and all parties to the transaction.

Comment Date: March 22, 2002.

22. New England Power Company

[Docket No. ER02–1208–000]

Take notice that on March 1, 2002, New England Power Company (NEP) tendered for filing the Original Service Agreement No. 210 for Network Integration Transmission Service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and Millennium Power Partners, L.P., the First Revised Service Agreement No. 109 for Network Integration Transmission Service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and Massachusetts Electric Company and Nantucket Electric Company; the First Revised Service Agreement No. 108 for Network Integration Transmission Service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and The Narragansett Electric Company; and the First Revised Service Agreement No. 116 for Network Integration Transmission Service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and USGen New England, Inc. (USGen).

NEP states that this filing has been served upon USGen and regulators in the Commonwealth of Massachusetts and the State of Rhode Island.

Comment Date: March 22, 2002.

23. American Electric Power Service Corporation

[Docket No. ER02–1209–000]

Take notice that on March 1, 2002, Central Power and Light Company (CPL) and American Electric Power Service Corporation (AEPSC), as designated agent for Central Power and Light Company, submitted for filing (1) a service agreement (the OATT Service Agreement) under which Pedernales Electric Cooperative, Inc. (Pedernales) will take transmission service pursuant to Part IV of the Open Access Transmission Tariff of the American Electric Power System (AEP OATT); and (2) an Interconnection Agreement (IA) between CPL and Pedernales, implementing new arrangements attendant to converting the former Pedernales Points of Delivery on CPL to Points of Interconnection with CPL.

CPL and AEPSC seek an effective date of February 1, 2002 for the two agreements and, accordingly, seek waiver of the Commission's notice requirements. Copies of the filing have been served on Pedernales and on the Public Utility Commission of Texas.

Comment Date: March 22, 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. 02–6100 Filed 3–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–54–000, et al.]

The New Power Company, et al.; Electric Rate and Corporate Regulation Filings

March 4, 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. The New Power Company, NewPower Holdings, Inc., Centrica plc

[Docket No. EC02–54–000]

Take notice that on February 28, 2002, The New Power Company, its parent company NewPower Holdings, Inc. and Centrica plc, filed with the Federal Energy Regulatory Commission (Commission) a joint application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Centrica plc will indirectly acquire NewPower Holdings, Inc. Applicants request confidential treatment of Exhibit I, pursuant to 18 CFR 388.112 of the Commission's regulations, for the written instruments associated with the proposed disposition. Further, Applicants respectfully request that the Commission approve this application on an expedited basis by March 27, 2002.

Comment Date: March 21, 2002.

2. Shanghai WEI-Gang Energy Company Ltd.

[Docket No. EG02–70–000]

Take notice that on February 19, 2002, Shanghai WEI-Gang Energy Company Ltd. (Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amended application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935. The applicant states that it is a Sino-foreign cooperative joint venture that is engaged directly and exclusively in developing, owning, and operating a gas-fired 50 MW simple cycle power plant in Shanghai, China, which will be an eligible facility.

Comment Date: March 25, 2002.

3. American Transmission Company LLC

[Docket No. ER02–529–001]

Take notice that on February 27, 2002, American Transmission Company LLC (ATCLLC) tendered for filing, in compliance with the Federal Energy Regulatory Commission's (Commission) January 30, 2002 order, a Revised Generation-Transmission Interconnection Agreement with Cloverland Electric Cooperative, which is designated as Revised Service Agreement No. 220. ATCLLC requests an effective date of June 29, 2001.

Comment Date: March 20, 2002.

4. RAMCO, Inc.

[Docket No. ER01–1916–001]

Take notice that on February 28, 2002, RAMCO, Inc. (RAMCO) filed a Notice of Change in Status with the Federal Energy Regulatory Commission (Commission) in accordance with the delegated letter order issued June 26, 2001 in RAMCO, Inc., Docket No. ER01–1916–000, accepting for filing RAMCO's marked-based rate tariff. The Notice of Change in Status reports that PG&E Dispersed Power Corporation will purchase 100% of the ownership shares of RAMCO. *Comment Date:* March 21, 2002.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1164–000]

Take notice that on February 28, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Dayton Power and Light Company—DP&L Power Services.

A copy of this filing was sent to Dayton Power and Light Company—DP&L Power Services.

Comment Date: March 21, 2002.

6. Connexus Energy

[Docket No. ER02–1165–000]

Take notice that on February 28, 2002, Connexus Energy submitted for filing with the Federal Energy Regulatory Commission (Commission) revised sheets to Connexus Energy's Electric Rate Schedule FERC No. 1. Connexus Energy states that the revised sheets effect minor rate changes under Connexus Energy's contract with Elk River Municipal Utilities.

Connexus Energy requests waiver of the Commission's notice requirement to allow a March 1, 2002 effective date.

Comment Date: March 21, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1167–000]

Take notice that on February 28, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Indianapolis Power & Light Company.

A copy of this filing was sent to Indianapolis Power & Light Company.

Comment Date: March 21, 2002.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1168–000]

Take notice that on February 28, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the

Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by New Power Company.

A copy of this filing was sent to New Power Company.

Comment Date: March 21, 2002.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1169–000]

Take notice that on February 28, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Western Area Power Administration-UGP Marketing.

A copy of this filing was sent to Western Area Power Administration-UGP Marketing.

Comment Date: March 21, 2002.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1170–000]

Take notice that on February 28, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Minnkota Power Cooperative.

A copy of this filing was sent to Minnkota Power Cooperative.

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. 02–6101 Filed 3–13–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7157–6]

Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the North American Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is inviting nominations of qualified candidates to be considered for appointment to fill vacancies on the National and Governmental Advisory Committees to the U.S. Representative to the North American Commission for Environmental Cooperation. Current vacancies on these committees are scheduled to be filled by May 1, 2002.

ADDRESSES: Submit nominations to: Mark Joyce, Designated Federal Officer, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601A), 1200 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Officer, U.S. Environmental Protection Agency (1601A), 1200 Pennsylvania Avenue NW., Washington, DC 20004; telephone 202–564–9802; fax 202–501–0661; e-mail *joyce.mark@epa.gov.*

SUPPLEMENTARY INFORMATION: The National and Governmental Advisory Committees advise the Administrator of the EPA in the Administrator's capacity as the U.S. Representative to the Council of the North American Commission for Environmental Cooperation (CEC). The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement (NAFTA) Implementation Act, Public Law 103–182 and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The Committees are responsible for providing advice to the United States Representative on a wide range of strategic, scientific, technological, regulatory and economic issues related to implementation and further elaboration of the NAAEC. The National Advisory Committee consists of 12 representatives of environmental groups and non-profit entities, business and industry, and educational institutions. The Governmental Advisory Committee consists of 12 representatives from state, local and tribal governments.

Members are appointed by the Administrator of EPA for a two year term with the possibility of reappointment. The Committees usually meet 3 times annually and the average workload for Committee members is approximately 10 to 15 hours per month. Members serve on the Committees in a voluntary capacity, but EPA does provide reimbursement for travel expenses associated with official government business.

The following criteria will be used to evaluate nominees:

- They have extensive professional knowledge of the subjects the Committees examine, including trade and the environment, the NAFTA, the NAAEC, and the CEC.
- They represent a sector or group that is involved in the issues the Committees evaluate.
- They have senior level experience that will fill a need on the Committees for their particular expertise.
- They have a demonstrated ability to work in a consensus building process with a wide range of representatives from diverse constituencies.

Nominees will also be considered with regard to the mandates of the Federal Advisory Committee Act that require the Committees to maintain diversity across a broad range of constituencies, sectors, and groups.

Nominations for membership must include a resume describing the professional and educational qualifications of the nominee and the nominee's current business address and daytime telephone number.

Dated: March 1, 2002.

Mark N. Joyce,

Designated Federal Officer.

[FR Doc. 02–6154 Filed 3–13–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30523; FRL–6826–4]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30523, must be received on or before April 15, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30523 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By Mail: Mary L. Waller, Product Manager (PM 21), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354 and e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112	Crop production Animal production
	311 32532	Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–30523. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30523 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30523. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record.

Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 432–REER. *Applicant*: Aventis Environmental Science USA LP, 95 Chestnut Ridge Road, Monvale, NJ 07645. *Product name*: Triticonazole Technical Fungicide. *Active ingredient*: Triticonazole [(5-[(4-chlorophenyl) methylene]-2,2-dimethyl-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol at 92.5%. *Proposed classification/Use*: None. For formulation of fungicides only for turf and ornamentals.

2. *File Symbol*: 264–ANG. *Applicant*: Aventis Crop Science, 2TW Alexandria Drive, Research Triangle Park, NC 27709. *Product name*: CHARTER Triticonazole Fungicide. *Active ingredient*: Triticonazole at 2.4%. *Proposed classification/Use*: None. For control of various seed-borne diseases in wheat, barley, and oats.

3. *File Symbol*: 264–ANR. *Applicant*: Aventis Crop Science. *Product name*: Chipco(R) Brand Triton(TM) Fungicide. *Active ingredient*: Triticonazole at 19.3%. *Proposed classification/Use*: None. For the prevention and control of certain diseases of commercial turfgrass, golf courses, and sod farms.

4. *File Symbol*: 264–ATE. *Applicant*: Aventis Crop Science. *Product name*: CHARTER(TM) Brand PB Fungicide. *Active ingredient*: Triticonazole at 1.25%. *Proposed classification/Use*: None. For control of various seed-borne diseases in wheat and barley.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: February 28, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–6157 Filed 3–13–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1071; FRL–6825–1]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1071, must be received on or before April 15, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1071 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Fungicide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'', and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–1071. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business

information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1071 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1071. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 28, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by Aventis CropScience, and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Aventis CropScience

PP 9F6051

EPA has received a pesticide petition (9F6051) from Aventis CropScience, 2 TW Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing tolerances for combined residues of the fungicide triticonazole 5-[(4-chlorophenyl)methylene]-2,2-dimethyl-1-(1H-1,2,4-triazol-1-ylmethyl)cyclopentanol), and its metabolites, 5-[(4-chlorophenyl)methylene]-2-hydroxymethyl-2-methyl-1-(1H-1,2,4-triazol- 1ylmethyl)cyclopentanol (RPA 404886) and 5-[(4-chlorophenyl)methylene]-2,2-dimethyl-1-(1H- 1,2,4-triazol-1ylmethyl)cyclopentan-1,3-trans-diol (RPA 406341)] in or on the raw agricultural commodities wheat grain at 0.05 parts per million (ppm), wheat forage at 0.05 ppm, wheat hay at 0.05 ppm, wheat straw at 0.05 ppm, barley grain at 0.05 ppm, barley forage at 0.05 ppm, barley hay at 0.05 ppm, and barley straw at 0.05 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Metabolism studies in wheat and barley were conducted using both phenyl-ring and triazole-ring labeled material in order to fully define the metabolic fate of triticonazole. Treatment regimes were chosen to simulate a commercial seed treatment application. The results from both crops were similar. Hydroxylation is the primary route of metabolism with the carbons of the cyclopentane ring and the methyl groups being the sites susceptible to oxidative degradation.

2. *Analytical method.* The plant metabolism studies indicated that analysis for the parent compound, triticonazole, and the metabolites RPA 404886 and RPA 406341 was sufficient to enable the assessment of the relevant residues in wheat and barley. Following extraction of the crop matrix and sample cleanup, the analytical enforcement method relies on the use of Turbo Ionspray, liquid chromatography/mass spectroscopy (LC/MS) for determination of the residue level. This method allows detection and measurement of residues in or on agricultural commodities at or above the proposed tolerance level. Analysis using Electrospray, liquid chromatography/ mass spectroscopy/ mass spectroscopy (LC/MS/MS) is more sensitive, and allows quantitation of analytes down to 0.005 ppm.

3. *Magnitude of residues.* Field residue trials were conducted across the major regions of small-grain cereal production in the United States. The treatment regime was selected to represent the use pattern that is the most likely to result in the highest residues.

Trials to define the magnitude of the residues in wheat raw agricultural commodity, were conducted at 22 trial sites of which 13 used spring wheat varieties and 9 used fall wheat varieties. The wheat seeds were treated with a triticonazole formulation at a rate of approximately 10 g active ingredient (a.i.)/100 kg wheat seed, a rate twice that anticipated under commercial use practice. Generally, the level of triticonazole residues observed in the samples were very low. For wheat forage, the residue of triticonazole found in or on the samples did not exceed 0.02 ppm; whereas, the residues for wheat hay did not exceed 0.008 ppm and the residues for wheat straw did not exceed 0.007 ppm. Triticonazole was not detected (method detection limit (MDL) = 0.002 ppm) in or on the wheat grain samples, except in one of the two replicate samples from one trial site where the residue level was determined to be 0.0055 ppm. Residues of the metabolites were not detected (MDL = 0.002 ppm) in any forage, hay grain or straw samples, except at one site where residues of RPA 406341 in the straw were just above the MDL but less than the limit of quantification (LOQ) of the method.

Trials to define the magnitude of the residues in the raw agricultural commodity barley were conducted at 14 trial sites of which 12 used spring wheat varieties and 2 used fall wheat varieties. The barley seeds were treated as described above for wheat. No residues of triticonazole or metabolites were detected (MDL = 0.002 ppm) in or on the barley grain samples. In the barley hay samples, no residues of triticonazole or metabolites were detected above the LOQ of the method (0.005 ppm), except at one site where the mean level of triticonazole in the duplicate samples was 0.0058 ppm. Similarly, in the straw, no residues of triticonazole or metabolites were detected above the LOQ of the method except in one replicate at one site where triticonazole was found at 0.0067 ppm.

Studies were conducted to determine if triticonazole residues concentrated upon processing wheat or barley grain. The wheat or barley seeds used for these studies were treated at a nominal rate of 50 g a.i./100kg wheat seed, a rate 10 times that anticipated under commercial use practice. Grain samples were collected at normal commercial maturity. Using procedures that simulate commercial practices, wheat grain was processed into bran, flour, middlings, shorts, and germ; whereas barley grain was processed into bran, flour, or pearled barley. Using LC/MS/MS, the LOQ and MDL for triticonazole and metabolites were 0.005 ppm and 0.002 ppm, respectively, for all matrices. Triticonazole-related residues were below the MDL for all grain and processed fraction samples. Based on these results, residues of triticonazole and metabolites do not concentrate in wheat or barley processed fractions following a triticonazole seed treatment application.

B. Toxicological Profile

1. *Acute toxicity.* Triticonazole is of low acute toxicity placing the active ingredient in Toxicity Category III and IV. Triticonazole is non-irritating to the eyes and skin and is not a skin sensitizer.

2. *Genotoxicty.* The genetic toxicity of triticonazole has been evaluated through a full battery of mutagenicity assays. Triticonazole was not mutagenic or genotoxic in any assay in either the presence or absence of metabolic activation.

3. *Reproductive and developmental toxicity.* Triticonazole is not a reproductive or developmental toxicant.

a. *Teratology - rat.* Groups of at least 23 pregnant rats received daily oral doses of 0, 40, 200 or 1,000 mg/kg/day of triticonazole from day 6 to day 15 of gestation inclusive. The mean weight gain and the food intake of females receiving 1,000 mg/kg/day was marginally lower than that of the controls. Litter size, survival *in utero* and mean fetal and placental weights were unaffected by treatment. There were no major abnormalities or visceral abnormalities at any dosage used. The mean weight gain and the food intake of females receiving 1,000 mg/kg/day was marginally lower than that of the controls. Females at 40 and 200 mg/kg/day were unaffected.

There was an apparent increase in the incidence of fetuses with an additional 14th rib or pair of ribs at 1,000 mg/kg/day. The incidences at 40 and 200 mg/kg/day were within the historical control range. Because the increased incidence of supernumerary (14th) ribs is not toxicologically significant, the NOAEL for maternal and developmental toxicity was 1,000 mg/kg/day.

b. *Teratology - rabbit.* Triticonazole was administered by gavage to 4 groups of at least 18 pregnant New Zealand white rabbits at dosages of 5, 25, 50 or 75 mg/kg/day, from Day 6 to Day 19 of gestation inclusive. Administration of 25 mg/kg/day was associated with body weight reduction and reduced food intake. At 50 and 75 mg/kg/day more marked body weight loss, reduced food intake and deaths were observed. Slightly increased pre-implantation and post-implantation losses and increased incidences of skeletal anomalies were observed at 75 mg/kg, secondary to severe maternal toxicity (6 animals died out of 20). The NOAEL for maternal toxicity was 25 milligrams/kilogram of body weight/day (mg/kg bwt/day) based on reduced body weight gains and food consumption at 50 mg/kg bwt/day. The NOAEL for fetal development was 50 mg/kg bwt/day, based on skeletal abnormalities noted in the presence of severe maternal toxicity at 75 mg/kg bwt/day.

c. *Two-generation reproduction - rat.* Groups of 28 males and 28 females Crl:CD BR/VAF/Plus rats (F0) were offered diets containing 0, 5, 25, 750 and 5,000 ppm of triticonazole for 10 weeks before mating and throughout gestation, lactation and weaning of the pups. A second generation of selected pups (F1) was provided diets at the same concentrations as their parents from weaning for at least 10 weeks before mating and throughout mating,

gestation and lactation. The NOAEL for systemic toxicity is 750 ppm, based on mortality, decreased body weight gain, and food consumption seen in the high dose animals in both generations. The NOAEL for reproductive performance and fetal effects is also 750 ppm, based on a reduction in mating and fertility indices, number of live births, pup viability and pup body weights at 5,000 ppm.

4. *Subchronic toxicity*—i. 28-day *dietary - rat.* Groups of five male and five female F–344 rats received triticonazole continuously, via the diet, at concentrations of 0, 500, 1,500, 5,000, 15,000 or 50,000 ppm (0, 50, 150, 500, 1,500, and 5,000 mg/kg/day, respectively for 4–weeks. At 5,000 ppm (500 mg/kg/day) growth performance, food consumption and efficiency of food utilization of males were inferior to control values throughout the treatment period. Hematological investigations revealed low platelet counts in males. Blood chemistry investigations revealed minimally low glucose concentrations. High liver weights and low prostate and uterus weights were noted at necropsy. The NOAEL for systemic toxicity was 1,500 ppm (150 mg/kg/day).

ii. *90–day dietary - rat.* Four groups of 10 male and 10 female CD rats received triticonazole via the diet at concentrations of 25, 250, 12,500 or 25,000 ppm (2.5, 25, 1,250, or 2,500 mg/kg/day) for 13 weeks. The NOAEL for this study was 12,500 ppm (1,250 mg/kg/day) based on reduced body weight gain, food consumption, and histopathological changes in the liver and adrenals.

c. *Dermal toxicity evaluation.* No adverse effects were noted in rats at the limit dose of 1,000 mg/kg bwt/day.

5. *Chronic toxicity - dog.* a. Four groups of 4 male and 4 female beagle dogs received triticonazole in gelatin capsules at dosages 2.5, 25 and 150 mg/kg/day. A similar control group received only empty gelatin capsules. The NOAEL for this study was 25 mg/kg bwt/day based on clinical signs of toxicity, lower for body weight gains; organ weight changes and histopathological changes of the liver and adrenals were seen at the LOAEL of 150 mg/kg/day.

b. *Combined chronic toxicity/oncogenicity - rat.* Four groups of 50 males and 50 females CD rats were administered triticonazole via the diet at concentrations of 5, 25, 750 and 5,000 ppm for 2–years. Observed adverse effects were only at the highest dose of 5,000 ppm with decreased body weight gain in females and histopathological changes in the adrenals. The NOAEL for this study was 750 ppm that is equivalent to 29.4 and 38.3 mg/kg/day respectively for males and females.

c. *Oncogenicity - mouse.* Triticonazole was administered via the diet to four groups of 52 male and 52 female CD mice at concentrations of 0, 15, 150 and 1,500 ppm for 78 weeks. The NOAEL was 150 ppm (17.4 and 20.1 mg/kg for males and females respectively) based on reductions in body weight gain, increased relative and absolute liver weights and histopathological changes in the liver at 1,500 ppm. There were no treatment-related neoplasms in this study.

6. *Neurotoxicity*—a. *Acute neurotoxicity.* Groups of 10 male and 10 female rats were dosed once by oral gavage at dose levels of 0, 80, 400, or 2,000 mg/kg of triticonazole in a methyl cellulose suspension. There were no differences observed in body weight, in any of the functional observation battery (FOB), or in motor activity. Microscopy revealed no changes related to the administration of triticonazole. Therefore, the NOAEL for acute neurotoxicity exceeds 2,000 mg/kg.

b. *Subchronic neurotoxicity.* Groups of 10 male and 10 female rats received basal diet containing triticonazole at inclusion levels of 0, 500, 2,500 or 10,000 ppm (0, 33, 170 and 695 mg/kg/day in the males, and 0, 39, 199 and 820 mg/kg/day in the females). There were no differences observed in bodyweight, in any of the FOB, or in motor activity. Microscopy revealed no changes related to the administration of triticonazole. Therefore, the NOAEL for sub-acute neurotoxicity exceeds 10,000 ppm (exceeds 695 mg/kg/day) in the rat.

7. *Animal metabolism.* Studies conducted in cows and hens using ^{14}C-triticonazole indicate the majority of the radioactivity is rapidly excreted with almost a negligible amount transferred to tissues, milk or eggs. Hyrdoxylation represented the primary metabolic pathway with the carbon atoms on the cyclopentane and those of the methyl groups being the sites of attack. Principal metabolites included RPA 406341 and RPA 404886 and a metabolite in which the hydroxymethyl group of RPA 404886 was further oxidized to a carboxylic acid function.

8. *Endocrine disruption.* No studies have been conducted to investigate the potential of triticonazole to induce estrogenic or other endocrine effects. The EPA has not yet developed the criteria it will use for characterizing endocrine disrupting substances. Therefore, an evaluation of the potential of triticonazole to induce estrogenic or other endocrine effects cannot be conducted at this time.

C. Aggregate Exposure

1. *Dietary exposure.* Tolerances are proposed under 40 CFR part 180 for the combined residues of triticonazole and metabolites in or on wheat grain, forage, straw, and hay, and in or on barley grain, forage, straw, and hay. The registration of triticonazole for control of fungal diseases in turf (non-food use) is pending at EPA. The turf use is for application by professional applicators, and does not include use on residential turf. Therefore, potential non-occupational (residential) exposure would include exposures resulting from consumption of potential residues in food and water only.

i. *Food.* Potential dietary exposures from food were estimated using the DEEM software system (Novigen Sciences, Inc.) and the 1994–96 USDA consumption data. Residue data from field trial studies in which grain grown from triticonazole treated barley and wheat seed was used to estimate chronic and acute dietary exposure. Percent crop treated values include the total amount of barley and wheat treated with any seed treatment pesticide, and thus, are conservative. Metabolism studies show that triticonazole residues are not expected in livestock tissues from animals fed at levels found in treated seed feed items. Tier 3 chronic exposure for the overall U.S. population was estimated to be 0.000002 mg/kg/bwt/day, representing less than 0.1% of the chronic reference dose. Chronic exposure for the most highly exposed population subgroup, children 1–6 years of age, was calculated to be 0.000004 mg/kg/bwt/day, also less than 0.1% of the chronic reference dose.

Tier 3 acute exposure at the 99.9th percentile for the overall U.S. population was estimated to be 0.000017 mg/kg/bwt/day, less than 0.1% of the acute reference dose. Acute exposure for the most highly exposed population subgroup, again children 1–6 years old, was estimated to be 0.00002 mg/kg/bwt/day, less than 0.1% of the acute reference dose. These analyses represent worst case estimates of potential dietary exposure to wheat and barley. Any exposure from residues of triticonazole in the diet are likely to be negligible to non-existent in real world situations.

ii. *Drinking water.* EPA's standard operating procedure (SOP) for drinking water exposure and risk assessments was used to perform the drinking water assessment. This SOP uses a variety of tools to conduct drinking water assessment. These tools include water models such as screening concentration in ground water (SCI-GROW), generic

expected environmental concentration (GENEEC), pesticide root zone management system/exposure analysis modeling system (PRZMS/EXAMS), and monitoring data. If monitoring data are not available, then the models are used to predict potential residues in surface and ground water, and the highest residue is assumed to be the drinking water residue. In the case of triticonazole, monitoring data do not exist; therefore, GENEEC was used to estimate the concentration of triticonazole that might occur in water. The GENEEC values represent very conservative assumptions and worst case scenarios. The calculated drinking water levels of comparison (DWLOC), for chronic and acute exposures for all adults and children exceed the drinking water estimated concentrations (DWECs) from the models by many orders of magnitude. The acute DWLOC for children is 2,500 parts per billion (ppb). The acute DWEC is 0.098 ppb. The chronic DWLOC for adults is 5,950 ppb. The chronic DWLOC for children/toddlers is 1,700 ppb. The DWEC for the worst case chronic scenario is 0.024 ppb. The drinking water levels of comparison are based on highly conservative dietary (food) exposures and are expected to be even higher in real world situations. Any exposure from triticonazole in drinking water would be negligible based on these highly conservative analyses.

2. *Non-dietary exposure.* The pending CHIPCO brand TRITON registration for triticonazole is for commercial turf grass, golf courses and sod farms. It is not intended for home use. As such, there would be no exposure in residential homes from this use, and is not included in the aggregate risk assessment.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'', concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' There is no reliable data at this time to determine whether triticonazole has a common mechanism of toxicity with other substances, or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, triticonazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance petition, therefore, it has not been assumed that triticonazole has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Using the conservative assumptions described above, based on the completeness and reliability of the toxicity data, it is concluded that chronic dietary exposure to the proposed uses of triticonazole will utilize less than 0.1% of the chronic reference dose for the U.S. population. The actual exposure is likely to be much less as more realistic data and models are developed. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or, below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. Acute exposure estimates for the U.S. population utilizes less than 0.1% of the acute RfD. This is a conservative assessment and actual exposure is likely to be far less. Drinking water levels of comparison based on the dietary exposure are much greater than highly conservative estimated levels, and would be expected to be well below the 100% level of the RfD, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure (food and drinking water) residues of triticonazole.

2. *Infants and children.* FFDCA Section 408 provides that the Agency may apply an additional safety factor for infants and children to account for pre-natal and post-natal toxicity or incompleteness of the data base. The toxicology data base for triticonazole regarding potential pre-natal and post-natal effects in children is complete according to existing Agency data requirements and does not indicate any particular developmental or reproductive concerns. The developmental toxicity studies clearly demonstrate that triticonazole is not teratogenic and the reproductive toxicity study did not indicate any increased sensitivity to the effects of triticonazole in developing, or young animals. Therefore, an extra safety factor is not warranted.

Using the conservative assumptions described in the exposure section above, exposure to residues of triticonazole in food for children 1–6 years old, (the most highly exposed sub group) is less than 0.1% of the acute and chronic reference doses. As in the adult situation, drinking water levels of comparison are much higher than the worst case drinking water estimated concentrations, and are expected to use well below 100% of the reference dose, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of triticonazole.

F. International Tolerances

Maximum residue limits codex MRLs for triticonazole and metabolites in or on wheat and barley commodities have not been established by the Codex Alimentarius Commission.

[FR Doc. 02–6156 Filed 3–13–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1074; FRL–6826–3]

Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–1074, must be received on or before April 15, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1074 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (703) 308–3194; and e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–1074. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1074 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1074. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the FFDCA, 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 28, 2002.

Peter Caulkins,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represent

the views of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Interregional Research Project Number 4

PP 6E4636

EPA has received pesticide petition (6E4636) from the Interregional Research Project Number 4 (IR–4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180.142 by establishing a tolerance for residues of the herbicide, plant regulator, and fungicide 2,4–D (2,4-dichlorophenoxyacetic) in or on the raw agricultural commodity wild rice at 0.1 parts per million (ppm). This notice includes a summary of the petition prepared by Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residue of 2,4–D is adequately understood. The regulable residue is 2,4–D *per se*, as established in 40 CFR 180.142. No livestock feed issues are raised by this action.

2. *Analytical method*. EN-CAS Method ENC gas liquid chromatograhy/electron capture detector (GLC/ECD), which has underdone successful independent laboratory validation is available for enforcement.

3. *Magnitude of residues*. One field trial (Minnesota) with 2 treatment rates was conducted. 2,4–D was applied by hand-held sprayer at 0X, 1X, and 2X the proposed label rate. The preharvest interval (PHI) was 53–64 days. Samples of grain and hulls were analyzed with 22½ months of harvest. No detectable residues (<0.05 ppm) of 2,4–D were reported.

B. Toxicological Profile

The nature of the toxic effects caused by 2,4–D are discussed in Unit II.B. of the **Federal Register** of October 24, 2001, (66 FR 53791) (FRL–6802–5).

C. Aggregate Exposure

The aggregate exposure (food, drinking water, and residential) assessment for 2,4–D is discussed in Unit II.C. of the **Federal Register** of October 24, 2001. The dietary exposure assessment includes a time-limited tolerance for wild rice at 0.1 ppm which was established in support of a section 18 emergency exemption.

D. Cumulative Effects

The potential for cumulative effects for 2,4–D and other substances with a common mechanism of toxicity is discussed in Unit II.D. of the **Federal Register** of October 24, 2001.

E. Safety Determination

The safety determination for the U.S. population, infants, and children for 2,4–D is discussed in Unit II.E. of the **Federal Register** of October 24, 2001.

F. International Tolerances

There are no Codex, Canadian, or Mexican maximum residue limits for use of 2,4–D on wild rice. Therefore, international harmonization is not an issue for this commodity.

2. Interregional Research Project Number 4

PP 1E6325

EPA has received pesticide petition (1E6325) from the Interregional Research Project Number 4 (IR–4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180.448 by establishing a tolerance for residues of the miticide, hexythiazox, trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide and its metabolites containing the (4-chlorophenyl-4-methyl-2-oxo-3-thiazolidine moiety in or on the raw agricultural commodity date at 1.0 ppm. This notice includes a summary of the petition prepared by Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of hexythiazox as well as the nature of the residues in plants is adequately understood for purposes of this tolerance. The residue of concern is hexythiazox and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety as specified in 40 CFR 180.448.

2. *Analytical method*. Adequate methods to enforce the tolerance expression have been submitted for publication in Pesticide Analytical Manual (PAM) II. The approved method is designated as AMR 985–87 which has been used in a variety of commodities. The method involves separation by high performance liquid chromotography (HPLC) followed by ultraviolet (UV) detection at 225 nm.

3. *Magnitude of residues*. Three field trials (06957.99–CA82, CA83, and CA84) were conducted in Coachella, California. No detectable residues of hexythiazox were found in the untreated date samples. The treated samples from trial CA82 had residues of 0.07 ppm and 0.26 ppm. The treated samples from trial CA83 had residues of 0.09 ppm and 0.11 ppm. The treated samples from trial CA84 had residues of 0.30 ppm and 0.63 ppm. Based on available data, the proposed use, one application of hexythiazox at the rate of 6 oz. (0.1875 lb active) per acre, minimum 90 day PHI should be reported.

B. Toxicological Profile

The nature of the toxic effects caused by hexythiazox are discussed in Unit II.B. of the **Federal Register** of December 28, 2000 (65 FR 82349) (FRL–6761–6).

C. Aggregate Exposure

The aggregate exposure (food, drinking water, and residential) assessment for hexythiazox is discussed in Unit II.C. of the **Federal Register** of December 28, 2000. Dates were included in this risk assessment in connection with a section 18 emergency exemption. A time-limited tolerance has been established at 1.0 ppm and is currently set to expire on October 31, 2002.

D. Cumulative Effects

The potential for cumulative effects caused by hexythiazox and other substances with a common mechanism of toxicity is discussed in Unit II.D. of the **Federal Register** of December 28, 2000.

E. Safety Determination

The safety determination for hexythiazox is discussed in Unit II.E. of the **Federal Register** of December 28, 2000.

F. International Tolerances

There are no CODEX, Canadian, or Mexican maximum residue limits for hexythiazox on dates.

[FR Doc. 02–6158 Filed 3–13–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7157–8]

Developing EPA Information Quality Guidelines Pursuant to OMB Information Quality Guidelines Under Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Public Law 106–554; HR 5658)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) will hold an Online Public Comment Session between March 19, 2002, and March 22, 2002, to give early opportunity to comment on areas to be considered as EPA develops Information Quality Guidelines pursuant to Office of Management and Budget Final Guidelines issued on February 22, 2002 (67 FR 8452–8460). EPA will post a request for public input on March 19 and comments will be accepted until midnight EST March 22, 2002. The time frame for this comment opportunity is brief due to the accelerated schedule for finalizing the Guidelines. The Public's comments will help inform and shape the direction EPA will take in developing the Guidelines. Instructions for providing your comments will be available online as of March 19, 2002. In addition to this online comment opportunity, EPA will make its draft Guidelines available for public comment and hold a Public Meeting on the Information Quality Guidelines in May 2002 in Washington, DC. Additional details about the Public Meeting will be posted on the EPA Office of Environmental Information website as soon as they become available.

DATES: The Online Public Comment Session will be held March 19–22, 2002.

ADDRESSES: The Online Public Comment Session will be accessible via the Internet at *www.epa.gov/oei.*

FOR FURTHER INFORMATION CONTACT: Evangeline Tsibris Cummings, Environmental Protection Agency, Office of Environmental Information, Office of Information Analysis and Access; telephone: 202–260–1655; e-mail: *cummings.evangeline@epa.gov*

Dated: March 7, 2002.

Elaine Stanley,

Director, Office of Information Analysis and Access, Office of Environmental Information.

[FR Doc. 02–6155 Filed 3–13–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA–02–502]

Eighth Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–03 Advisory Committee will be held on April 4, 2002, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: April 4, 2002; 2 p.m.–4 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Planning and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the eighth meeting of the WRC–03 Advisory Committee.

The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the eighth meeting is as follows:

Agenda

Eighth Meeting of the WRC–03 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

April 4, 2002; 2 p.m.–4 p.m.

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Seventh Meeting
4. Status of Preliminary Views and Proposals
5. Reports from regional WRC–03 Preparatory Meetings
6. NTIA Draft Preliminary Views and Proposals
7. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
8. Future Meetings
9. Other Business

Federal Communications Commission.

Don Abelson,

Chief, International Bureau.

[FR Doc. 02–6111 Filed 3–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 2002.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. The Royal Bank of Scotland Group PLC, Edinburgh, Scotland, United Kingdom; to engage *de novo* through its subsidiary, Identrus, LLC, New York, New York, in certain data processing activities, pursuant to § 225.28(b)(14), of Regulation Y. See also The Royal Bank of Canada, 82 Fed. Res. Bull. 363 (1996) (the ''First Integrion Order'') and the Royal Bank of Canada, 83 Fed. Res. Bull. 135 (1997) (the ''Second Integrion Order''; and together with the First Integrion Order, the ''Integrion Orders''). See also, Cardinal Bancshares, Inc., 82 Fed. Res. Bull. 674 (1996) (permitting bank holding company to provide data processing and transmission services to unaffiliated institutions to assist those institutions in offering banking and financial services to their customers over the internet); Toronto-Dominion Bank, 83 Fed. Res. Bull. 335 (1997) (permitting bank holding company to provide computer software to broker-dealers and other financial institutions to permit those institutions to execute purchases and sales of securities for their customers).

B. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Barclays PLC and Barclays Bank PLC, both of London, England; to engage *de novo* through its subsidiary, Identrus, LLC, New York, New York, in certain data processing activities, pursuant to Sec. 225.28(b)(14), of Regulation Y. See also The Royal Bank of Canada, 82 Fed. Res. Bull. 363 (1996) (the ''First Integrion Order'') and the Royal Bank of Canada, 83 Fed. Res. Bull. 135 (1997) (the ''Second Integrion Order: and together with the First Integrion Order, the ''Integrion Orders''). See also, Cardinal Bancshares, Inc., 82 Fed. Res. Bull. 674 (1996) (permitting bank holding company to provide data processing and transmission services to unaffiliated institutions to assist those institutions in offering banking and financial services to their customers over the internet); Toronto-Dominion Bank, 83 Fed. Res. Bull. 335 (1997) (permitting bank holding company to provide computer software to broker-dealers and other financial institutions to permit those institutions to execute purchases and sales of securities for their customers).

Board of Governors of the Federal Reserve System, March 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–6173 Filed 3–13–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 8, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Citizens Bancshares, Inc., Dyersburg, Tennessee; to acquire 100 percent of Metropolitan Bancshares, Inc., Munford, Tennessee, and thereby indirectly acquire The Munford Union Bank, Munford, Tennessee.

Board of Governors of the Federal Reserve System, March 8, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–6094 Filed 3–13–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 29, 2002.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. John T. Michell, Great Falls, Montana; to retain voting shares of First Bancshares of Baton Rouge, Inc., Baton Rouge, Louisiana, and thereby indirectly retain voting shares of First Bank, Baton Rouge, Louisiana.

Board of Governors of the Federal Reserve System, March 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–6172 Filed 3–13–02; 8:45 am]

BILLING CODE 6210–01–S

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will meet on Sunday, April 21, 2002, through Wednesday, April 24, 2002, in Mobile, Alabama. The sessions will take place from 7:30 p.m. until 10 p.m. on Sunday, 8:30 a.m. until 5 p.m. on Monday and Tuesday and from 8:30 a.m. until 2:30 p.m. on Wednesday. The meeting will be held at the Radisson Admiral Semmes Hotel, 251 Government Street, Mobile, Alabama 36602. The purpose of

this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public.

A limited number of hotel rooms have been reserved at the Radisson Admiral Semmes Hotel for anyone needing hotel accommodations. Telephone: 251–432–8000. Please specify the U.S. Government Printing Office or the Depository Library Council meeting when you contact the hotel. Room cost is $55 (plus tax) per night through March 20, 2002.

Robert T. Mansker,

Deputy Public Printer.

[FR Doc. 02–6093 Filed 3–13–02; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held of Friday, March 29, from 8:30 a.m. to 4 p.m. and is open to the public.

ADDRESSES: The meeting will be held at 6010 Executive Boulevard, Fourth Floor, Rockville, Maryland, 20852.

FOR FURTHER INFORMATION CONTACT: Anne Lebbon, Coordinator of the Advisory Council, at the Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 600, Rockville, Maryland, 20852, (301) 594–7216. for press related information, please contact Karen Migdail at (301) 594–6120.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHRQ, on (301) 594–6662 no later than March 22, 2002.

Agenda, roster, and minutes are available from Ms. Bonnie Campbell, Committee Management Officer, Agency for Healthcare Quality and Research, 2101 E. Jefferson Street, Suite 400, Rockville, Maryland, 20852. Her phone number is (301) 594–1846. Minutes will be available after April 30, 2002.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) established the National Advisory Council for Healthcare Research and Quality. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of the Agency to enhance the quality, improve outcomes, reduce cost of health care services, improve access to such services through scientific research, the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services. The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members.

II Agenda

On Friday, March 29, 2002, the meeting will begin at 8:30 a.m., with the call to order by the Council Chairman. The Director, AHRQ, will present the status of the Agency's current research, programs, and initiatives. Tentative agenda items include discussions on disparities in health care, bioterrorism, and AHRQ's Priority Populations Inclusion Policy. The official agenda will be available on AHRQ's website at *www.ahrq.gov* no later than March 8, 2002. The meeting will adjourn at 4:00 p.m.

Dated: March 4, 2002.

Lisa Simpson,

Acting Director.

[FR Doc. 02–6118 Filed 3–13–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measure.

OMB No.: 0970–0230.

Description: This is a proposed extension of a current information collection. The purpose of this collection is to obtain data upon which to base the computation for measuring State performance in meeting the legislative goals of TANF as specified in section 403(a)(4) of the Social Security Act and 45 CFR part 270. Specifically, DHHS will use the data to award the portion of the bonus that rewards States for their success in moving TANF recipients from welfare to work. States will not be required to submit this information unless they elect to compete on a work measure for the TANF High Performance Bonus awards.

Respondents: Respondents may include any of the 50 States, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures	54	2	16	1,728

Estimated Total Annual Burden Hours: 1,720.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 6, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–6120 Filed 3–13–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: DHHS/ACF Employment Retention and Advancement (ERA) Evaluation 12-Month Survey.

OMB No.: New Collection.

Description: The Employment Retention and Advancement (ERA) Evaluation is the most ambitious, comprehensive effort to learn what works in this area to date and is explicitly designed to build on past research by rigorously testing a wide variety of approaches to promoting employment retention and advancement for a range of populations. The project, conceived and sponsored by the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services (HHS),[1] seeks to ''conduct a multi-site evaluation that studies the net impact and cost-benefits of programs designed to help Temporary Assistance for Needy Families (TANF) recipients, former TANF recipients, or families at-risk of needing TANF benefits retain and advance in employment.'' [2] The ERA Evaluation involves up to 15 random assignment experiments in 9 states, testing a diverse set of strategies designed to promote stable employment and/or career advancement for current and former welfare recipients and other low-income parents. Over the next several years, the ERA project will generate a wealth of rigorous data on the implementation, effects, and costs of these alternative approaches. The data collected will be used for the following purposes:

- To study ERA's impacts on employment, earnings, participation, educational attainment and income;
- To collect data on a wider range of outcome measures than is available through welfare or UI records in order to understand how individuals were affected by ERA; job retention and job quality, educational attainment; interactions with and knowledge of the ERA program; household composition; childcare, transportation, and health coverage; and income;
- To supplement research on the implementation of ERA across sites;
- To conduct non-experimental analyses to explain participation decisions and provide a descriptive picture of the circumstances of low-wage workers;
- To obtain participation information important to the evaluation's benefit-cost component;
- And to obtain contact information for possible future follow-up, information that will be important to achieving high response rates for the 36-month survey.

Respondents: The respondents of the 12-month survey are Temporary Assistance for Needy Families (TANF) applicants, current and former TANF recipients, or individuals in families at-risk of needing TANF benefits (working poor and hard-to-employ) from 9 states participating in the ERA Evaluation: California, Oregon, New York, Ohio, Minnesota, Illinois, South Carolina, Texas, Tennessee. Survey respondents can be grouped according to 3 program clusters: Advancement projects; placement and retention (hard-to-employ) projects; and mixed goal projects. All 3 program clusters will receive the 12-month core survey. The placement and retention (hard-to-employ) participants will also receive the hard-to-employ survey module. Survey participants will be administered a telephone survey (for those individuals who cannot be reached by phone, staff at the survey firm will attempt to contact them in person) approximately 12 months after random assignment. Approximately 7,050 participants will complete the core survey and 2,400 participants will complete the core plus hard-to-employ module survey.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
12-Month Survey (Core only)	7,050	1	30 minutes or .5 hrs	3,525
12-Month Survey (Core plus Hard-to-Employ Module)	2,400	1	45 minutes or .75 hrs	1,800

Estimated Total Annual Burden Hours: 5,325.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

[1] The U.S. Department of Labor has also provided funding to support the ERA project.

[2] From the Department of Health and Human Services RFP No.: 105–99–8100

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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 7, 2002,

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–6121 Filed 3–13–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/HS 02–04]

Fiscal Year 2002 Discretionary Announcement for Nationwide Competition of Early Head Start; Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), DHHS.

ACTION: Notice of Fiscal Year 2002 Early Head Start availability of financial assistance for nationwide competition and request for applications.

SUMMARY: Early Head Start programs provide early, continuous, intensive and comprehensive child development and family support services on a year-round basis to low-income families. The purpose of the Early Head Start program is to enhance children's physical, social, emotional, and intellectual development; to support parents' efforts to fulfill their parental roles; and to help parents move toward self-sufficiency. The Administration on Children, Youth and Families announces approximately $72 million in financial assistance to be competitively awarded to local public and private non-profit and for-profit entities—including Early Head Start and Head Start grantees—to provide child and family development services for low-income families with children under age three and pregnant women. Faith-based organizations are eligible to apply for these funds to become Early Head Start grantees.

Applicants may apply for one or more of the following categories of expansion:

1. Current Early Head Start grantees, proposing to expand in their currently approved EHS service area ($20 million). (See Priority 1 Evaluation Criteria.)

2. Applicants, including current Early Head Start grantees and, proposing to establish an Early Head Start program in areas currently unserved by Early Head Start (see Attachment A for a listing of currently served areas; any area not listed is eligible for funding in this category) ($42 million). (See Priority 1 Evaluation Criteria.)

3. Applicants proposing to serve children in an Early Head Start program whose families are receiving support from the Child Welfare Services (CWS) system ($10 million). (See Priority 2 Evaluation Criteria.)

Applicants eligible for funding under this category are as follows:

a. Current grantees may include a request for serving CWS children as a second part of their application under either 1 or 2 above or may submit an application only to serve CWS children.

While each applicant should decide on the appropriate mix between CWS children and other children, we would not expect applicants to propose that a large portion of their children be CWS children unless there are compelling reasons for doing so which must be documented in the application.

b. Applicants who are not current EHS providers may apply to serve CWS children only if they are also submitting an expansion proposal under 2 above.

While each applicant should decide on the appropriate mix between CWS children and other children, we would not expect applicants to propose that a large portion of their children be CWS children unless there are compelling reasons for doing so which must be documented in the application.

DATES: The closing date and time for receipt of applications is 4:30 p.m. EDT on May 13, 2002.

Note: Applications should be submitted to: Early Head Start Nationwide Competition, 1901 N. Fort Myer Drive, Suite 301, Arlington, VA 22209. However, prior to preparing and submitting an application, in order to satisfactorily compete under this announcement, it will be necessary for potential applicants to read the full announcement which is available through the addresses listed below.

ADDRESSES: A copy of the program announcement, necessary application forms, and appendices can be obtained by contacting: Early Head Start Nationwide Competition, 1901 North Fort Myer Drive, Suite 301, Arlington, Virginia 22209. The telephone number is 1–800–458–7699; or e-mail to: *ehsn@pal-tech.com.*

Copies of the program announcement and necessary application forms can also be downloaded from the Head Start Web site at: *www.acf.dhhs.gov/programs/hsb*

FOR FURTHER INFORMATION CONTACT: Early Head Start Nationwide Competition, 1901 N. Fort Myer Drive, Suite 301, Arlington, VA 22209 or telephone: 1–800–458–7699 or e-mail to: *ehsnpal-tech.com.*

SUPPLEMENTARY INFORMATION:

Eligible Applicants

Applicants eligible to apply to become an Early Head Start program are local public and private non-profit and for-profit entities. Early Head Start and Head Start grantees are eligible to apply. Faith-based organizations are eligible to apply for funds. Applicants are reminded that eligibility to apply for a grant under this Notice is limited to local agencies, as defined in section 641 (a) and (b) of the Head Start Act.

Project Duration

For new Early Head Start grantees, the competitive awards made through this announcement will be for one-year budget periods and an indefinite project period. Subsequent year budget awards will be made non-competitively, subject to availability of funds and the continued satisfactory performance of the applicant. Successful applicants which are current Early Head Start grantees will be funded in one of two ways. Those Early Head Start grantees that currently have indefinite project periods will continue to be funded as indefinite project period grants. However, those Early Head Start grantees that have finite project periods will be given supplements to their current, time limited grant. A grantee, for example, currently funded for $200,000 with a project period ending September 30, 2003 that is awarded another $100,000 through this announcement would then be funded as a $300,000 Early Head Start grantee with a project period that still ends on September 30, 2003. This would be true regardless of whether the new funds are to expand services within the grantee's current service area or to expand into another currently unserved area. Prior to the end of an Early Head Start grantee's current project period (*i.e.,* September 30, 2003 in the above example), ACF will announce a competition for those areas served by each EHS grantee whose project period is nearing an end. In such a competition, current EHS grantees in good standing, who submit acceptable

applications, will be given priority in funding decisions.

Early Head Start Child Welfare Services Initiative (See Priority 2 Evaluation Criteria)

The Head Start Bureau is establishing a new initiative to promote and expand partnerships between local EHS programs and local child welfare services (CWS) agencies. This initiative will enhance and expand services for children and their families who are part of the child welfare service system and provide additional and more intensive services in local communities for this population. The Head Start Bureau is setting aside $10 million to fund this initiative and plans to serve approximately 1,000 children. Both new applicants and existing EHS grantees may apply for these funds. See below for the Priority 2 Evaluation Criteria for the EHSCWS Initiative. For additional information about the Initiative, see the full Program Announcement for this competition which is available from the address listed above.

Federal Share of Project Costs

The Federal share will not be more than 80 percent of the total approved costs of the project except if a waiver is granted under the authority cited in section 640(b) of the Head Start Act.

Matching Requirements

Grantees that operate Early Head Start programs must, in most instances, provide a non-Federal contribution of at least 20 percent of the total approved costs of the project.

Available Funds

See the Program Announcement for the list of the approximate amount of funds available for States. (The Program Announcement is available from the address listed above.)

Anticipated Number of Projects to be Funded

It is estimated that there will be 100–125 awards.

Statutory Authority

The Head Start Act, as amended, 42 U.S.C. 9831 et seq.

Priority 1 Evaluation Criteria

All new applicants and current grantees proposing to expand services in their current service area or provide services in a new service area should address the criteria for Priority 1 below. Competing applications for financial assistance will be reviewed and evaluated on the six criteria which are summarized below. The point values following each criterion indicate the numerical weight each criterion will be accorded in the review process.

Criterion 1: Objectives and Need for Assistance (15 Points)

The extent to which, based on community assessment information, the applicant identifies any relevant physical, economic (*e.g.,* poverty in the community), social, financial, institutional, or other issues which demonstrate a need for the Early Head Start program.

The extent to which the applicant lists relevant program objectives that adequately address the strengths and needs of the community.

The extent to which the applicant describes the population to be served by the project and explains why this population is most in need of the services to be provided by the program.

The extent to which the applicant gives a precise location and rationale for the project site(s) and area(s) to be served by the proposed project. If the applicant is a current grantee planning to expand its program it needs to demonstrate that the geographic area is currently underserved or, where applicable, unserved by Early Head Start Programs. If the applicant is new, it needs to demonstrate that the proposed service area is currently unserved by Early Head Start programs.

Criterion 2: Results or Benefits Expected (10 Points)

The extent to which the applicant identifies the results and benefits to be derived from the project and links these to the stated objectives.

The extent to which the applicant describes the kind of data to be collected and how they will be utilized to measure progress towards the stated results or benefits.

Criterion 3: Approach (25 Points)

The extent to which the applicant demonstrates a thorough knowledge and understanding of the Head Start Program Performance Standards.

The extent to which the applicant explains why the approach chosen is effective in light of the needs, objectives, results and benefits described above.

The extent to which the approach is grounded in recognized standards and/or guidelines for high quality service provision or is defensible from a current research or best practices standpoint.

Criterion 4: Staff and Position Data and Organization Profiles (15 Points)

The extent to which the proposed program director, proposed key project staff, the organization's experience, including experience in providing early, continuous, and comprehensive child and family development services, and the organization's history with the community demonstrate the ability to effectively and efficiently administer a project of this size, complexity and scope.

The extent to which the applicant's management plan demonstrates sufficient management capacity to implement a high quality Early Head Start program.

The extent to which the organization demonstrates an ability to carry out continuous improvement activities.

Criterion 5: Third Party Agreements/Collaboration (15 Points)

The extent to which the applicant presents documentation of efforts (letters of commitment, interagency agreements, etc.) to establish and maintain ongoing collaborative relationships with community partners.

The extent and thoroughness of approaches to combining Early Head Start resources and capabilities with those of other local child care agencies and providers to provide high quality child care services to infants and toddlers which meet the Head Start Program Performance Standards.

Criterion 6: Budget and Budget Justification (20 Points)

The extent to which the program's costs are reasonable in view of the planning and activities to be carried out and the anticipated outcomes.

The extent to which the program has succeeded in garnering cash or in-kind resources, in excess of the required Federal match, from local, State, other Federal or private funding sources. The extent to which costs for facilities are reasonable and cost effective.

The extent to which the salaries and fringe benefits reflect the level of compensation appropriate for the responsibilities of staff.

The extent to which assurances are provided that the applicant can and will contribute the non-Federal share of the total project cost.

Priority 2 Evaluation Criteria

All applicants (current grantees and new applicants) applying to serve children under the EHS Child Welfare Services Initiative discussed in detail in the full program announcement should address the following six evaluation criteria separately in their application. Competing applications for financial assistance will be reviewed and evaluated on the six criteria. The point values following each criterion indicate

the numerical weight each criterion will be accorded in the review process.

Criterion 1: Objectives and Need for Assistance (15 Points)

The extent to which the applicant identifies the need and objectives for services to children and their families who are in the child welfare system, how many children and families will be served, and provide a description of the children and families to be served through the EHSCWS Initiative. This could include children in the child welfare system who are living with their parents or other family members, those in foster care settings, children whose parents are incarcerated or in substance abuse recovery programs, and/or other children birth to three who are within the child welfare system. The children the applicant proposes to serve must also meet EHS eligibility requirements, and can receive EHS services until the child is three years of age, even if the CWS services end.

Criterion 2: Results or Benefits Expected (10 Points)

The extent to which the applicant identifies and describes the results and benefits to be derived from the EHSCWS Initiative and link these to the stated objectives.

The extent to which the applicant describes the kind of data to be collected and how they will be utilized to measure progress towards the stated results or benefits.

Criterion 3: Approach (25 Points)

The extent to which the applicant describes the Early Head Start Child Welfare Services (EHSCWS) collaboration design and the approach to providing services to EHSCWS children through this Initiative, and outlines a plan of action for implementing those services, including the scope and detail of how the proposed work will be accomplished. This will include information about recruitment, what each partner will be responsible for in the delivery of services, how both the Head Start and the applicable Child Welfare Services regulations will be met, and what kind of shared communication system will be in place between the partners that will ensure quality and timely delivery of services

Criterion 4: Staff and Position Data and Organization Profiles (15 Points)

The extent to which the applicant describes the staffing plan for the EHSCWS Initiative, including how the partners will share staff, supervise staff, and provide training. They will indicate other areas of resource sharing, such as space and the possible co-location of staff.

Criterion 5: Third Party Agreements/ Collaboration (15 Points)

The extent to which the applicant includes a written collaboration agreement between the EHS and local CWS agency that specifically outlines the roles and responsibilities of each partner and how the EHSCWS Initiative will be carried out.

Criterion 6: Budget and Budget Justification (20 Points)

The extent to which the applicant submits a reasonable budget and justification that supports the activities proposed for the partnership, and that is appropriate in the carrying out of the EHSCWS Initiative. Grantees must budget for two meetings in Washington, DC, during the first year of funding. Project directors and evaluators will meet approximately three months after funding for approximately two days. In years two and three, grantees will be expected to send both their project directors and evaluators to one meeting in Washington, DC each year.

Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these jurisdictions need not take action regarding Executive Order 12372.

Applications for projects to be administered by Federally recognized Indian Tribes are also exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOC as soon as possible to alert them to the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to the ACF, they should be addressed to: William Wilson, Head Start Bureau, Grants Officer, 330 C Street SW., Room 2220, Washington, DC 20447.

Attn: Early Head Start Nationwide Competition/Expansion

A list of the Single Points of Contact for each State and Territory can be found on the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html*

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: March 7, 2002.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

Appendix A

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002

State and county	Service area (local community)
Alabama:	
Blount	The communities of Allgood, Locust Fork and all areas north of those communities.
Lawrence	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Morgan	Entire County.
Jefferson	Birmingham, Bessemer, Tarrant City, Centerpoint, Adamsville, Grayville, Brookville, Sayre, Roebuck, Ensley, Forrestdale, Gardendale, and other small unincorporated areas. Referrals from the county welfare agency for teen mothers and mothers with chemical addictions and at risk of child abuse.
St. Claire	Entire County.
Walker	Jasper.
Elmore	Bradford.
Chilton	Entire County.
Autauga	Autaugaville.
Lee	Entire County.
Russell	Entire County except Phenix City.
Tuscaloosa	Entire County.
Montgomery	Entire County.
Calhoun	Anniston.
Houston	Entire County.
Alaska:	
Lower Yukon	Villages of Pilot Station and St. Mary's.
Kuskokwin	Villages of Akiak and Nunapitchuk.
Anchorage	Municipality of Anchorage.
Fairbanks North Star	Entire Borough.
Arizona:	
Apache	Concho, Springerville, St. Johns.
Coconino	Grand Canyon, Flagstaff, Page, Williams.
Yavapai	Ashfork/Seligman, Black Canyon City, Camp Verde, Sedona, Prescott Valley, Prescott, Humboldt/Dewey/Mayer, Cottonwood, Chino Valley, Clarkdale.
Navajo	Holbrook, Pinetop-Lakeside, Show Low, Snowflake, Winslow.
Maricopa	City of Phoenix: an area bounded by Camelback Road on the north; Elliot Road on the south; 40th Street on the east; and 43rd Avenue on the west. City of Avindale: an area bounded on the north by Van Buren; on the east by Dysart; on the south by Litchfield Road; and on the west by Lower Buckeye Road. El Mirage: an area bounded on the north by Bell Road; on the east by 107th Avenue; on the west by 120th Avenue; and on the south by Northern Avenue. South Central Phoenix: Baseline on the south; north to Van Buren; 35th Avenue on the west; and east to 40th Street.
Pima	Entire County.
Graham	Entire County.
Santa Cruz	Entire County.
Conchise	Entire County.
Greenlee	Entire County.
Pinal	Entire County.
Gila	Entire County.
Navajo Nation (also see CO, NM, and UT).	Navajo Reservation. Navajo School Board.
Mohave (also see Washington County in UT).	Colorado City.
Arkansas:	
Arkansas	Entire County.
Logan	Entire County.
Lonoke	Entire County.
Conway	Entire County.
Franklin	Entire County.
Johnson	Entire County.
Yell	Entire County.
Polk	Entire County.
Pope	Entire County.
Calhoun	City of Hampton.
Ouachita	City of Bearden.
Union	City of Fairview.
Clay	Cities of Rector, Piggott, and Corning.
Lawrence	Entire County.
Randolph	Entire County.
Newton	Entire County.
Mississippi	Entire County.
Pulaski	(1) Townships of College Station, Sweet Homes, Higgins, and Wrightsville to Oak Street. (2) In the City of Little Rock: the township of Granite Mountain; and in east Little Rock: east of Main Street to include West Broadway north and south; Interstate 30 South, Scott Hamilton Rd., Baseline Rd., and Geyer Springs Road. Within the City of Little Rock: north of Roosevelt Road; west of Main Street; east of University Avenue; and south of I–630.
Sebastian	All of Wards One and Two on the north side of Fort Smith; joined and bordered by the Arkansas River on the north, east and west; ending to the south at Rogers Avenue, Dodson Avenue, and Euper Lane.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Washington	Entire County.
California:	
Alameda	Albany, Berkeley, Emeryville.
	San Leandro, Castro Valley, Union City, Fremont, San Lorenzo, Hayward Livermore, Dublin and Pleasanton (Cherryland), and Newark.
	West Oakland, San Antonio, Fruitvale, Central East Oakland and Elmhurst.
Calaveras	San Andreas, Valley Springs and Angels Camp.
Colusa	Colusa, Grimes, Princeton, Williams, Arbuckle, Maxwell, Meridian.
Contra Costa	Concord, Pleasant Hill, Antioch, Brentwood, Oakley, Richmond, San Pablo, Pittsburg.
Del Norte	The cities of Crescent City, Fort Dick, Smith River, Orleans, Orick, Willow Creek, McKinleyville.
Humboldt	Eureka, Arcata, South Bay, Fortuna, Ferndale, Rio Dell, Rohnerville, Bridgeville, Miranda, Alderpoint, Redway.
	Hoopa Valley Indian Reservation.
El Dorado	Entire County.
Fresno	West Fresno, Southeast Fresno, and Fresno Unified School District.
Kern	East Bakersfield, Arvin/Lamont, Delano, Shafter, and Southwest Bakersfield.
	Metro Bakersfield.
Kings	Corcoran and Hanford.
Hanford	Avenal and Lemoore.
Lake	Lake, Mendocino.
Modoc	Entire County.
Siskyu	Tulelake School District.
Los Angeles	City of Los Angeles: Areas within the following boundaries:
	(1) 3rd and Temple—on the north, to Hoover, to Vermont, to 7th, to Wilshire, to Hoover and Central on the south border in downtown L.A.
	(2) Baldwin Park USD—north: Oak Ave. and Arrow Hwy; south: Farnell; east: Azusa Canyon, La Serna, Willow, Ardilla, Mayland; west: San Gabriel River.
	(3) City of South El Monte—north: Garvey Ave, Fern St., Elliot Ave., and Schmidt Rd.; south: Whittier Narrows Recreation Area; east: San Gabriel River, Fruitvale Ave.
	(4) El Monte City border; west to Whittier Narrows Recreation Area and Rio Hondo River; north: Century Blvd., 104th Street, 103rd Street; south: Anderson Fwy (105); east: Prairie Ave.; west: La Cienega Blvd.
	(5) Gardena—north: El Segundo Blvd.; south: 182 St., Artesia Blvd. and Redondo Beach Blvd; east: Vermont Ave; west: Crenshaw Blvd. and Gramercy Blvd.
	(6) North: Century Blvd., 104th Street, 103rd Street; south: Anderson Freeway (105); east: Prairie Ave.; and west: Crenshaw and Gramercy Blvds.
	(7) Plaza De La Raza—north: A.T.& S. F. Railroad and Washington Blvd.; south: Lakeland Rd. and Imperial Hwy.; east: Shoemaker, Carmenita and Mulberry; west: San Gabriel River (605 Freeway).
	(8) Plaza De La Raza—north: Imperial Hwy; south: Excelsior Dr., Alondra Blvd. and Santa Ana Frwy; east: Valley View Ave., Marquardt Ave.; west: Shoemaker Ave., Bloomfield Ave., Best Ave. and Norwalk City border.
	(9) Pomona USD—north: Foothill Blvd., Lewis Ave., Oak Dr., Parkwood Ln., Harrison Ave., Arrow Ave. and American Ave.; south: Pomona Frwy (60) and Riverside Dr.; east: San Bernardino County Line, Mountain Ave., Carnegie Ave., and Towne Ave.; west: Fulton Rd., L.A. County Fairplex, Fairplex Dr., San Bernardino Frwy (10), and Campus Dr.
	(10) North Hollywood—north: Saticoy St.; south: Universal City Border, Acama St. and Riverside Dr.; east: Clybourn Ave., Burbank Airport, and Burbank City border; west: Tujunga Ave., Fulton Ave., Coldwater Canyon Ave., and Hollywood Frwy. (170).
	(11) Harbor City—north: Sepulveda Blvd., Lomita Blvd.; south: Palo Verdes Dr., Anaheim St.; east: Harbor Frwy (110) and Normandie Ave.; west: Western Ave., City of Torrance border, and City of Lomita border.
	(12) North Hollywood, Sunland and Harbor City, Wilmington, San Perdo, Lomita, Carson, portions of Torrence and Ranchos PalasVerde, Downey, Southcentral, LA, Westwood, Pomano, Echo Park area, Pico Rivera, Antelope Valley (Lancaster, Palmdale). Bell, Bell Gardens, and Cudahy.
	(13) West: Highland Avenue; north: 6th Street; east: Hoover Street; south: 9th Street (turns into James M. Wood Blvd.).
	North: 6th Street; East: Hoover; West: Highland Avenue; South: 9th Street.
	An area bounded on the north by 3rd Street; on the east by Central Avenue; on the south by Vernon Avenue; and on the west by Western Boulevard.
	Greater Hollywood area: City of West Hollywood and Mid-Wilshire District.
	An area bounded on the north by Wilshire Blvd to Sepulveda to Olymouc; on the east by Beverly Drive to Pico to Durango to La Cienega to Jefferson to Sepulveda to Centinela to Praire; on the south by Imperial Highway to Sepulveda to Lincoln to Admiralty Way to Washington; on the west by the Pacific Ocean Cities of Santa Monica, West Los Angeles, Culver City, Inglewood, Lennox, Westchester, Venice, Palms and Mar Vista.
	City of Long Beach, central area.
	South Central LA: an area bounded on the north by Slauson Avenue; on the south by Century Blvd.; on the east by Avalon Blvd.; and on the west by Van Ness Avenue.
	The communities of West Adams, Jefferson Park, and University Park.
	An area bounded by 9th Street on the north; Martin Luther King Blvd. on the south; San Perdro Street on the east; and Crenshaw on the west.
	Compton.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
	Cities of Pasadena, Altadena and Glendale.
	City of Hawaiian Gardens.
Orange County	Entire County.
San Bernardino	City of Upland.
	Cities of San Bernardino and Colton.
Marin	San Rafael, Novato, Corte Madera, Greenbrae, San Anselmo.
Mendocino	Ukiah, Willits.
Nevada	North San Juan, Nevada City, Truckee.
Placer	Lincoln, Rocklin, Kings Beach, Foresthill.
Sacramento	(1) The City of Sacramento: the communities of Del Paso Heights, North Sacramento/Gardenland, Midtown, Oak Park, South Sacramento, Meadowview, Natomas, Land Park and Arden/Howe.
	(2) Cities of Citrus Heights and Galt.
	(3) Towns of Rio Linda/Everta, North Highlands, Foothill Farms, Orangevale, Carmichael, Fair Oaks, Rancho Cordova, South Sacramento, Franklin/Laguna, Elk Grove, and Antelope.
	(4) Woodland, Winters, Davis and West Sacramento.
San Diego	Carlsbad, Encinitas, Del Mar, Solana Beach, Escondido, San Diego, Poway, Coronado, La Mesa, El Cajon, Lemon Grove, Santee, Ramona, Palomar Julain, Anza Borrego, Lakeside, Spring Valley, Jamul, Harbinson Crest, Laguna Pine Valley, Mountain Empire, Alpine, Chula Vista, National City, Imperial Beach, Nestor.
	Oceanside, Vista, San Marcos, Fallbrook, Valley Center, Rincon, San Pasqual, Pauma Valley.
	Campo Reservation, Rincon Reservation, San Pasqual Reservation, Pauma Reservation, and Pala Reservation.
Riverside	Soboba Reservation, Morongo Reservation, and San Jacinto.
	Cities of Banning and Beaumont.
	All cities in Riverside County with the exception of Banning, Beaumont and Morongo Band Indian Reservation.
San Francisco	Chinatown, Tenderloin, Visitation Valley; and parts of Northbeach, Civic Center, and Bayview Hunters Point.
San Joaquin	Entire County.
San Mateo	Half Moon Bay, East Palo Alto, Menlo Park, South San Francisco, Daly City, San Bruno and San Mateo.
Santa Barbara	Santa Maria, Lompoc, Santa Barbara and Summerland.
Santa Clara	Northwest and central San Jose.
Santa Cruz	Watsonville and Santa Cruz.
Shasta	Entire County.
Siskyu	Community of Weed.
Trinity	Cities of Weaverville and Hayfork.
Stanislaus	Westside of county: areas of Westley and Patterson.
Sutter	Entire County.
Yuba	Entire County.
Tulare	Entire County.
Ventura	Oxnard, Hueneme, Santa Paula, Fillmore and Piru.
Yolo	Entire County.
Sonoma	Sebastopol, Petaluma, Guernville, Sonoma, Rohnert Park, Windsor, and Santa Rosa.
San Luis Obispo	Entire County.
San Benito	Entire County.
Monterey	Chular, Greenfield, King City, San Lucas, San Ardo, Bradley, Gonzales.
	Seaside, Marina, East Salinas, Pajaro, Castroville, Prunedale, Soledad, Speckles, Monterey, Boronda.
Colorado:	
Adams	City of Aurora within Adams County.
Arapahoe	City of Aurora within Arapahoe County.
Crowley	Entire County.
Otero	Entire County.
Denver	An area bounded on the east by Colorado Boulevard; on the north by I–70; on the west by Sheridan Boulevard; and on the south by Hampden Avenue.
	Neighborhoods of East Colfax, Northeast Park Hill, Elyrie Swansea, Clayton, Cole, Five Points, Whittier, and Auraria Lincoln Park.
	Northwest Denver: an area bordered by Sheridan Blvd. on the west; I–70 on the north; I–25 on the east; and Mississippi Avenue on the south.
Eagle	Entire County.
El Paso	Entire County.
Fremont	Entire County.
Larimer	Pourde School District boundary that includes the cities of Fort Collins, LaPorte, Timnath and Wellington, and the communities of Wellington, La Porte, Loreland and surrounding areas.
La Plata	Within the boundaries of the Southern Ute Reservation and the Ignacio School District.
	Entire County, with the exception of the area served by Southern Ute Nation.
Navajo Nation (also see AZ, NM, and UT).	Navajo Reservation, Navajo School Board.
Connecticut:	
Fairfield	City of Bridgeport: neighborhoods of The Hollow, West End, South End, North End, East End, and East Side.
	City of Stamford.
Hartford	City of Manchester.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Litchfield	Towns of Torrington, Winston, Canaan, and New Milford.
Middlesex	Towns of Middletown, Essex, Portland, Clinton, Westbrook, East Hampton and Deep River.
New Haven	City of Waterbury.
	City of New Haven.
Windham	Towns of Brooklyn, Danielson and Willimantic.
Tolland	City of Vernon.
Delaware:	
Kent	Entire County.
New Castle	Entire County.
Sussex	Georgetown.
Florida:	
Alachua	Communities of Majestic Oaks, Sugarfoot Oaks, Tower Oaks, Cedar Ridge, Clayton Estates, Magnolia Plantation.
Bay	Panama City Beach.
Franklin	Apalachicola.
Jackson	Entire County.
Baker	Entire County.
Brevard	Entire County.
Broward	Pompano Beach, Hollywood.
Charlotte	Punta Gorda, Port Charlotte.
Collier	Entire County.
DeSoto	Entire County.
Glades	Entire County.
Hardee	Entire County.
Hendry	Entire County.
Highlands	Entire County.
Columbia	Lake City.
Dade	City of Homestead and towns of Brownsville, Scott Carver, Liberty City, Winwood, Goulds, Leisure City, Carol City and Opalocka.
Gadsden	Entire County.
Gulf	Wewahitchka, Port St. Joe.
Jefferson	Entire County.
Madison	Madison, Greenville.
Lake	Clermont, Eustis, Leesburg, Mount Dora, Montclair Village, Groveland.
Lee	Entire County.
Marion	Entire County.
Citrus	Entire County.
Martin	Within Hobe Sound, the communities of Banner Lake and Gomez; within Port Salerno, the communities of Jack Avenue, and New Monrovia; and within Stuart, the community of Golden Gate.
Okaloosa	Crestview and 20 mile radius.
Palm Beach	Pahokee, South Bay and Belle Glade—western region of county, West Palm Beach Hispanic Community, West Palm Beach, North-South West Palm Beach, South Bay, Riviera Beach, Lake Worth, Boynton Beach, Delray Beach.
Sarasota	Sarasota, Cities of Newton, Venice and North Port.
Hillsborough	Entire County.
St. Lucie	Entire County.
Santa Rosa	Entire County.
Dixie	Cross City.
Gilchrist	Trenton.
Levy	Chiefland, Yankeetown, Williston, Bronson.
Volusia	Cities of Daytona Beach and Pierson.
Manatee	Palmetto and East Bradenton.
Pinellas	Entire County.
Georgia:	
Chatham	Savannah.
Catoosa	Entire County.
Chattooga	Entire County.
Dade	Entire County.
Walker	Entire County.
Whitfield	Dalton.
	Entire County, except south of Tilton and north of Varnell.
Murray	Entire County, except north of Eton and south to North Georgia Speedway.
Dougherty	Albany.
Emanuel	Swainsboro, Twin City, Summertown, Adrian, Oak Park, Lexsy, Garfield, Stillmore.
Fulton	East Point, Alpharetta, Roswell, Sandy Springs.
	Downtown Atlanta, Reynoldstown and Bankhead.
Clayton	Jonesboro.
Cobb	Marietta.
Douglas	Douglasville.
Gwinnett	Lawrenceville.
Dekalb	Chamblee.
	South Dekalb bounded by Covinton Highway, Brown's Mill Road and Bouldercrest Road.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Hall	Entire County.
White	Entire County.
Forsyth	Entire County.
Hart	Entire County.
Sumter	Americus.
Carroll	Entire County.
Troup	Entire County.
Coweta	Entire County.
Clarke	Athens.
Greene	Entire County.
Morgan	Entire County.
Hawaii:	
Hawaii	South Kona, North Kona, South Kahala, North Kahala, Ka'u.
Maui	Lanai, Makawao/Upcountry, Hana/East Maui, Lahaina/West Maui.
Oahu	(1) Kalhili and Waipahuto Hawaii Kai. (2) Honolulu vicinity defined by Hawaii Kai (Koolauloa): Kaaawa, Hau'ula, Laie, Kahuku, Pupukea (North Shore), Sunset, and Kahana Valley. Waianae Coast (Leeward Oahu); Waimanalo area (Winward Oahu); and Makalapa area (Central Oahu and Honolulu).
Idaho:	
Bonner	Community of Sand Point.
Kootenai	Cities of Coeur d'Alene, Post Falls and surrounding areas.
Nez Perce (also see Asotin County in the State of Washington.	Nez Perce County, Idaho, except Nez Perce Reservation. Nez Perce Reservation.
Lewis	Nez Perce Reservation.
Clearwater	Nez Perce Reservation.
Ada	Entire County.
Elmore	Entire County.
Payette	City of Payette.
Canyon	Cities of Caldwell and Nampa.
Benewah	Couer d'Alene Reservation.
Kootenai	Couer d'Alene Reservation.
Franklin (also see Box Elder and Cache Counties, Utah).	Entire County.
Illinois:	
Champaign	Entire County.
Clinton	Entire County.
Washington	Entire County.
Cook County	South Chicago, South Deering, South Lawndale, and Lower West Side communities. Near South, Armour Square. An area of New City bounded by Damen Ave. on the west; Racine Ave. on the east; Garfield Blvd. on the south; 49th Pl. on the north; and West Englewood and Englewood communities. Communities of West Humboldt Park and New City with the exception of an area bounded by Damen Ave. on the west; Racine Ave. on the east; Garfield Blvd. on the south; 49th Pl. on the north. Communities of Cicero/Berwyn, Maywood, Bellwood, Robbins, and Hoffman Estates/Schaumburg. Uptown community. Rogers Park and West Ridge communities. Evanston Township. Communities of Grand Boulevard, Washington Park, and Kenwood. Communities of Oakland, Albany, Park, North Lawndale, Gage Park, Fuller Park, Near West Side, Roseland, West Town, Austin, Logan Square, West Pullman, Chatham, Woodlawn, Washington Heights, Near North Side, Garfield Park, and Douglas.
Edwards	Entire County.
Saline	Entire County.
Gallatin	Entire County.
Hamilton	Entire County.
Wabash	Entire County.
Wayne	Entire County.
White	Entire County.
Kane	Towns of Elgin, Aurora, and Carpentersville.
Sangamon	Entire County.
St. Clair	District 1: East St. Louis; District 3: Cahokia; Centreville.
Peoria	City of Peoria.
Madison	Towns of Alton, Granite City, Pontoon Beach, Venice, Collinsville and East Alton.
Will	Town of Joliet.
Williamson	Entire County.
Franklin	Entire County.
DuPage	Towns of Bensenville and surrounding areas, Wheaton, West Chicago, Villa Park, and Lombard.
Lake	Town of Waukegan.
Hancock	Entire County.
McDonough	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Pike	Entire County.
Alexander	Entire County.
Hardin	Entire County.
Johnson	Entire County.
Massac	Entire County.
Pope	Entire County.
Pulaski	Entire County.
Union	Entire County.
Indiana:	
Blackford	Entire County.
Grant	Entire County.
Clay	Entire County.
Owen	Entire County.
Putnam	Entire County.
DeKalb	Entire County.
Howard	Entire County.
Miami	Entire County.
Lawrence	Entire County.
Martin	Entire County.
Orange	Entire County.
Washington	Entire County.
Madison	Entire County.
Marshall	Entire County.
Starke	Entire County.
Marion	Pike, Washington, Lawrence, Wayne, Center, and Warren Townships.
Tippecanoe	Entire County.
Vanderburg	Entire County.
Posey	Entire County.
Vigo	Entire County.
Knox	Entire County.
Sullivan	Entire County.
Kosciusko	Entire County.
Benton	Entire County.
Boone	Entire County.
Fountain	Entire County.
Montgomery	Entire County.
Parke	Entire County.
Vermillion	Entire County.
Warren	Entire County.
Iowa:	
Allamakee	Entire County.
Clayton	Entire County.
Carroll	Entire County.
Dallas	Entire County.
Greene	Entire County.
Guthrie	Entire County.
Blackhawk	City of Waterloo.
Cherokee	Entire County.
Plymouth	Entire County.
Clarke	Entire County.
Decatur	Entire County.
Clay	Entire County.
Des Moines	Entire County.
Henry	Entire County.
Lee	Entire County.
Louisa	Entire County.
Hamilton	Entire County.
Humboldt	Entire County.
Webster	Entire County.
Wright	Entire County.
Linn	Entire County.
Polk	An area bounded on the west by County Line from Raccoon River to 9400 N.; on the north by 9400 N to NW 58th to NW 110th Place to NE 22nd Street to NE 118th Street; on the east by NE 29th to I–80 to NE 120th Street to East University to NE 64th Street to SE 6th to SE 60th to the Des Moines River to I–65 to 80th SW; and on the south by 80th SW/County Line from Des Moines River to 9800 W.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Scott	City of Davenport: an area bounded on the west by the west side of I–280 on the west edge of Davenport continuing from the Mississippi River north to the north side of I–80 on the north edge of Davenport; on the north, from a point where I–280 meets I–80 continuing east to the east side of I–74 on the east edge of Davenport; on the east, from the north starting point of I–74 where it meets I–80, continuing south of I–74 to the Mississippi River; and on the south: east from the east side of I–74 west along the Mississippi River to the west edge of I–280 where I–280 meets the river; and smaller surrounding cities in Scott County including Bettendorf, Bluegrass, Buffalo, Donahue, Eldridge, LeClaire, Long Grove, Maysville, and Walcott.
Woodbury	Entire County.
Hardin	Entire County.
Marshall	Entire County.
Poweshiek	Entire County.
Story	Entire County.
Tama	Entire County.
Kansas:	
Atchinson	Entire County.
Brown	Entire County.
Doniphan	Entire County.
Jefferson	Entire County.
Leavenworth	Entire County.
Marshall	Entire County.
Nemaha	Entire County.
Pottawatomie	Entire County.
Jackson	Entire County, except the Prairie Band Pottawatomi Reservation.
	Prairie Band of Potawatomi Reservation and two communities adjacent to the reservation, Hoyt and Mayetta.
Cherokee	Entire County.
Crawford	Entire County.
Labette	Entire County.
Montgomery	Entire County.
Clay	Entire County.
Cloud	Entire County.
Washington	Entire County.
Dickerson	Entire County.
Ellsworth	Entire County.
Saline	Entire County.
Ford	Entire County.
Johnson	An area bounded on the west by Ogg Road; on the east by Stateline Road; on the north by County Line Road; and on the south by I–435.
Lyon	Entire County.
Riley	Entire County.
Rush	Entire County.
Russell	Entire County.
Ellis	Entire County.
Sedgwick	City of Wichita: an area bounded by Murdock Street on the north; 47th South Street on the south; Woodlawn Street on the east; and Main Street on the west.
Shawnee	Entire County.
Sumner	Entire County.
Wyandotte	Kansas City, an area bounded by Wyandotte/Douglas County Line on the west; the Wyandotte/Johnson county line on the south; and the Kansas/Missouri state line on the north and east.
Finney	Entire County.
Kentucky:	
Bourbon	Entire County.
Fayette	Entire County.
Harrison	Entire County.
Nicholas	Entire County.
Scott	Entire County.
Breckinridge	Entire County.
Grayson	Entire County.
Calloway	Entire County.
Carlisle	Entire County.
Fulton	Entire County.
Marshall	Entire County.
Hickman	Entire County.
Ballard	Entire County.
Graves	The towns of Mayfield, Fancy Farm, Lowes, Sedalia, Symsonia and Wingo.
Warren	Bowling Green, Rockville, Albaton, Rich, Panel, Plano.
McCracken	Paducah, Concord, Farley, Heath, Hendron, Loneoak.
Christian	Hopkinsville.
Daviess	Owensburg.
Ohio	Entire County.
Lyon	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Trigg	Entire County.
Harlan	Entire County.
Clay	Entire County.
Knox	Entire County.
Laurel	Entire County.
Jackson	Entire County.
Rockcastle	Entire County.
Jefferson	Entire County.
Knott	Hindman, West Caney.
Letcher	Jenkins, Fleming.
Lincoln	Entire County.
Owsley	Entire County.
Bullitt	Mt. Washington.
Henry	Eminence.
Casey	Entire County.
Cumberland	Entire County.
Green	Entire County.
Taylor	Entire County.
Bell	Communities of Pineville and Middlesboro.
Whitley	Communities of Williamsburg and Boston.
Louisiana:	
East Baton Parish	City of Baton Rouge: an area starting at the Long Allen Bridge: east to Plank Road (Highway 67); north to Hooper (State Highway 408); northeast on Hooper Road to Greenwell Springs Road (State Highway 37); south and southwest on Greenwell Springs Road to Airline Highway; southeast on Airline Highway to Bayou Manchac; west on Bayou Manchac to the Mississippi River; north to the Long Allen Bridge.
Bossier Parish	Entire Parish.
Iberia Parish	Entire Parish.
Lafayette Parish	Entire Parish.
St. Martin Parish	Entire Parish.
Rapides Parish	Entire Parish.
St. Charles Parish	Entire Parish.
St. Helena Parish	Entire Parish.
St. Tammany Parish	The northern portion of Parish bordered on the north by the St. Tammany/Washington Parish Line; on the east by the Pearl River/Mississippi State Line; on the south by US Highway 190; and on the west by the St.Tammany-Tangipahoa Parish.
Tangipahoa Parish	Entire Parish.
Washington Parish	Entire Parish.
Livingston Parish	Entire Parish.
West Feliciana Parish	Entire Parish.
Orleans Parish	Entire Parish.
Caddo Parish	Entire Parish.
St. Landry Parish	Entire Parish.
Maine:	
Andro-scoggin	City of Lewiston.
	Towns of Livermore, Livermore Falls.
Franklin	Entire County.
Cumberland	Entire County.
Northern Kennebec	Entire County.
Somerset	Entire County.
Oxford	Entire County.
York	City of Biddeford.
Penobscot	Greater Bangor.
Hancock	Greater Ellsworth.
Maryland:	
Alleghany	Entire County.
Baltimore	City of Baltimore: The communities of Edmondson Village, Sandtown/Winchester, Reservoir Hill, Park Heights (upper and lower), WashingtonVillage/Pigtown, Mideast, Forest Heights, Mondawmin, Howard Park, Rosemount, Franklin Square, Poppletown, Penn/Druid/Uppertown, Green Mount East, Hopkins Middleast, Madison East End, Cherry Hill, Brooklyn/Curtis Bay, Claremount, Armstead, Beechfield/Irvington, Belair/Edison, Waverly, Govans, Hampden/Woodbury, and Barclay (entire city).
	City of Baltimore: An area bounded on the north by Monument Street; on the south by the Waterfront; on the east by the City Line; and on the west by Broadway Street.
Caroline	Entire County.
Anne Arundel	Southern Anne Arundel County, including the towns of Harwood, West River, Galesville, Lothian, Churchton, Deale, Shady Side and Traceys Landing.
Cecil	Entire County.
Dorchester	Entire County.
Garrett	Entire County.
Harford	Entire County.
Montgomery	Gaithersburg and Germantown.
	Rockville, Silver Spring, Wheaton, and Tacoma Park.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Prince George's	Hyattsville, Riverdale, Langley Park, Greenbelt, Adelphi, College Park, Glendarden, Capital Heights, and Landover.
Washington	Entire County.
Massachusetts:	
Bristol	City of Fall River, and the Towns of Somerset, Swansea, Rehoboth, Dighton, Freetown, Berkley, Lakeville, and Seekonk.
	Towns of Raynham and Taunton.
Essex	Cities and towns of Lawrence, Methuen, Andover, and North Andover.
Franklin	Towns of Greenfield, Orange, and Turners Falls.
Hampden	Cities of Holyoke, Chicopee, and Springfield.
Middlesex	City of Somerville.
	City of Lowell.
Suffolk	City of Boston.
	City of Boston.
Worcester	Towns of Southbridge, Webster, Oxford, Millbury, Spencer.
Norfolk	Quincy, Braintree, Weymouth, and Milton.
Plymouth	Hull.
Middlesex	Arlington, Watertown, Waltham, Newton.
Norfolk	Brookline.
Michigan:	
Alger	Entire County.
Marquette	Entire County.
Alpena	Entire County.
Bay	Entire County.
Iosco	Entire County.
Arenac	Entire County.
Cheboygan	Entire County.
Antrim	Entire County.
Benzie	Entire County.
Charlevoix	Entire County.
Emmet	Entire County.
Grand Traverse	Entire County.
Kalkaska	Entire County.
Leelanau	Entire County.
Missaukee	Entire County.
Roscommon	Entire County.
Wexford	Entire County.
Delta	Entire County.
Menominee	Entire County.
Schoolcraft	Entire County.
Baraga	Entire County.
Houghton	Entire County.
Keweenaw	Entire County.
Genesee	Carman-Ainsworth School District and Bendel School District.
	Eligible families enrolled in the Michigan Job Corp, Mott Community College, University of Michigan-Flint, and the Career Alliance Program (Sylvester Broome Training Center); Flint School District including service areas of Holmes and Whittier; and School Districts of Clio, Montrose, Mt. Morris, Genesee, Kearsley, West Wood Heights and Flushing.
Clare	Entire County.
Gladwin	Entire County.
Mecosta	Entire County.
Midland	Entire County.
Osceola	Entire County.
Chippewa	Entire County.
Luce	Entire County.
Mackinac	Entire County.
Ionia	Entire County.
Isabella	Entire County.
Gratiot	Entire County.
Montcalm	Entire County.
Gogebic	Entire County.
Ontonagon	Entire County.
Kent	(1) Within the City of Grand Rapids: an area bounded by 3 Mile Road to the north; East Beltline Ave (except East Grand Rapids) to the east; 28th Street to the south; and Byron Center Road/Covell Avenue/Walker Avenue to the west.
	(2) South of Grand Rapids: an area bounded by 28th Street to the north; Patterson Avenue to the east; 68th Street to the south; and Byron Center Avenue to the west.
Manistee	Entire County.
Lake	Entire County.
Newaygo	Entire County.
Mason	Entire County.
Huron	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
LaPeer	Entire County.
Sanilac	Entire County.
Tuscola	Entire County.
Ottawa	Towns of Ferrysburg, Grand Haven, Spring Lake, Crockery Township, Robinson Township; and Holland, West Olive, and Allendale communities.
Wayne	City of Detroit—neighborhoods bounded to the: (1) North by Woodland St.; to the east by Oakland St.; to the south by Warren Av.; and to the west by Byron St. (2) North by Fullerton St.; to the east by Byron St.; to the south by W. Grand Blvd.; and to the west by Holmur St. (3) North by Puritan St.; to the east by Thomas St.; to the south by Fullerton St.; and to the west by Meyers Rd. (4) North by 8 Mile Rd.; to the east by Southfield Fwy.; to the south by Puritan St.; and to the west by Five Points St. (5) North by Puritan St.; to the east by Southfield Fwy.; to the south by Fullerton St.; and to the west by Telegraph Rd.
Calhoun	Entire County.
St. Joseph	Entire County.
Barry	Entire County.
Mackinac	Entire County.
Luce	Entire County.
Delta	Entire County.
Schoolcraft	Entire County.
Marquette	Entire County.
Elger	Entire County.
Chippewa	Entire County.
	Bay Mills Reservation.
Baraga	Keweehaw Reservation.
Gogebic	Lac Vieux Desert Reservation.
Menominee	Hannahville Reservation.
Delta	Little Traverse Bay Band Reservation.
Emmet	Little Traverse Bay Band Reservation.
Charlevoix	Pokagom Reservation.
Otsego	Pokagom Reservation.
Cass	Pokagom Reservation.
Berrien	Entire County.
Van Buren	Entire County.
Ingham	City of Lansing, Lansing School District.
Hillsdale	City of Hillsdale, and north of US 12 to the Jackson County line.
Jackson	Entire County.
Leelanau	Grand Traverse Band Reservation.
Minnesota:	
Anoka	Entire County.
Becker	Entire County.
Hubbard	Entire County.
Mahnomen	Entire County.
Beltrami	Entire County.
Cass	Entire County.
Crow Wing	Entire County.
Morrison	Entire County.
Todd	Entire County.
Kittson	Entire County.
Lake of the Woods	Entire County.
Marshall	Entire County.
Roseau	Entire County.
Ramsey	The following school districts: Moundview, Roseville, North St. Paul-Maplewood-Oak Dale, and White Bear Lake; City of St. Paul (excluding old Model Cities area) bounded by Interstate 35, Interstate 94 and Lafayette Road.
Benton	Entire County.
Sherburne	Entire County.
Stearns	Entire County.
Mille Lacs	Mille Lacs Reservation.
Hennepin	The following communities within the City of Minneapolis: Northeast, University, and Phillips Communities of: Camden, Central, Longfellow, Near North, Nokomis, Powderhorn and Southwest in the City of Minneapolis; the suburban communities of Brooklyn Park, Golden Valley, and Richfield.
Menhnomen	White Earth Reservation.
Becker	White Earth Reservation.
Hubbard	White Earth Reservation.
Cloquet	Fond du Lac Reservation.
Sawyer	Fond du Lac Reservation.
Brookston	Fond du Lac Reservation.
Arlton	Fond du Lac Reservation.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
St. Louis	Fond du Lac Reservation.
Mississippi:	
Calhoun	Entire County.
Lauderdale	Meridian.
Leflore	Greenwood.
Perry	Entire County.
Printiss	Entire County.
Warren	Vicksburg.
Harrison	Biloxi.
Hinds	Entire County.
Holmes	Lexington, Ebenezer, Bowling Green.
Jones	City of Laurel and Towns of Ellisville and Soso.
Copiah	Job Corps site—Crystal Springs.
Leake	Walnut Grove.
Newton	Entire County.
Monroe	Entire County.
Lee	Entire County, except Tupelo.
	Tupelo.
Lafayette	Oxford.
Grenada	Grenada City.
Marshall	Byhalia, Holly Springs.
Panola	Batesville.
Pontotoc	City of Pontotoc.
Tallahatchie	Glendoro.
Tate	Senatobia.
Tunica	City of Tunica.
Chickasaw	Houston.
Oktibbeha	Starkville.
Clay	West Point.
DeSota	Walls.
Lowndes	Columbus.
Noxubee	Macon.
Washington	Hollandale, Arcola, Tralake, Murphy.
Henry	Eminence.
Leake	Mississippi Band of Choctaw Indians Reservation: Community of Redwater.
Neshoba	Mississippi Band of Choctaw Indians Reservation: Communities of Pearl River, Boguechitto, and Tucker.
Adams	Entire County.
Stone	Entire County.
Pike	Entire County, except the City of McComb.
Pearl River	Entire County.
Missouri:	
Adair	Entire County.
Knox	Entire County.
Barry	Entire County.
Christian	Entire County.
Dade	Entire County.
Dallas	Entire County.
Lawrence	Entire County.
Greene	City of Springfield—an area bounded on the north by I–44; on the south by Battlefield Road; on the east by Hwy 65; and on the west by Haseltine Road.
Polk	Entire County.
Stone	Entire County.
Taney	Entire County.
Webster	Entire County.
Bates	Entire County.
Cass	Entire County.
Henry	Entire County.
St. Clair	Entire County.
Buchanan	Entire County.
Cape Girardeau	Entire County.
Jackson	City of Kansas—an area bounded to the north by the Missouri River; to the west by State Line Road; to the south by 112th Street; to the east by Hillcrest Road.
Jasper	Entire County.
Newton	Entire County.
McDonald	Entire County.
Lincoln	Entire County.
Montgomery	Entire County.
St. Charles	Entire County.
Warren	Entire County.
Lafayette	Entire County.
Chariton	Entire County.
Saline	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Ray	Entire County.
Johnson	Entire County.
Moniteau	Entire County.
Pettis	Entire County.
St. Louis	(1) St. Louis County—an area bounded on the north by the Missouri River; on the south by the Meramec River; on the east by Mississippi River, except for St. Louis City which borders St. Louis County on the following streets: Riverview, Goodfellow, Skinker-McCausland, River Des Peres and Carondelet; and on the west by Wild Horse Creek Road, Ossenfort Road, Boguett Road, and Fox Creek Road. (2) St. Louis City—an area bounded on the east by the Mississippi River; on the north, south and west, bordering St. Louis County on the following streets: Riverview, Goodfellow, Skinker-McCausland, River Des Peres, and Carondelet. (3) St. Louis City—an area bounded on the south by Forest Park Parkway and portions of Forest Park; on the west by Skinker Boulevard, Kienlen, Jennings Station Road; on the north by West Florissant Road; and on the east by Grand Boulevard. St. Louis City—an area bounded on the south by Meramec Street; on the west by Grand Avenue to Arsenal Avenue, Arsenal Avenue west to Kingshighway Blvd., north to Columbia Avenue west to Hampton, north to Highway 40 (64), west to Skinker Avenue, north to Forest Park Parkway; on the north by Forest Park Parkway to Grand Avenue, north to St. Louis Avenue, west to Clay Avenue, north to Natural Bridge, west to Clay Avenue, north to West Florissant to Adelaide, north to Highway 70; on the east by Highway 70 to Chouteau Avenue, Chouteau Avenue east to the river and the river south to Meramec.
Marion	Entire County.
Boone	Entire County.
Montana:	
Beaverhead	Entire County.
Silver Bow	Entire County.
Lincoln	School District #4 boundary that includes the city of Libby.
Missoula	Entire County.
Yellowstone	City of Billings and School District #2 boundary that includes the City of Lockwood.
Glacier	Blackfeet Reservation.
Lake	Flathead Indian Reservation.
Hill	Rocky Boy's Indian Reservation. Entire County.
Blaine	Entire County.
Nebraska:	
Adams	Entire County.
Clay	Entire County.
Franklin	Entire County.
Hall	Entire County.
Nuckolls	Entire County.
Webster	Entire County.
Box Butte	Entire County.
Dawes	Entire County.
Douglas	City of Omaha: an area bordered on the north by I–680; on the east by the Missouri River; on the south by Harrison Street (Sarpy County Line); and on the west by 72nd Street. City of Omaha: an area bordered on the north by I–680; on the east by Iowa State Line; on the south by Harrison Street (Sarpy County Line); and on the west by 72nd Street.
Gage	Entire County.
Saline	Entire County.
Brown	Entire County.
Colfax	Entire County.
Custer	Entire County.
Garfield	Entire County.
Greeley	Entire County.
Holt	Entire County.
Howard	Entire County.
Platte	Entire County.
Sherman	Entire County.
Valley	Entire County.
Lancaster	City of Lincoln.
Scotts Bluff	Entire County.
Sarpy	Entire County.
Nevada:	
Clark	Las Vegas, North Las Vegas and Henderson.
Elko	Entire County.
Whitepine	Entire County.
Washoe	Cities of Reno and Sparks.
New Hampshire:	
Belknap	Entire County.
Merrimack	City of Concord, Bossawen, Loudon, Penacook.
Hillsborough	City of Manchester.
Strafford	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
New Jersey:	
Atlantic	Entire County.
Cape May	Entire County.
Camden	City of Camden.
Ocean	Lakewood Township.
Cumberland	Entire County.
Salem	Entire County.
Glouster	Entire County.
Essex	City of East Orange.
	Newark Central Ward, West Ward, North Ward (Verona Avenue to Orange Street and Lake Street to McCarter Highway), and Bakery Village.
	Cities of Montclair and Orange.
Hudson	Union City, North Bergen, West New York, Weehawken, Guttenberg, and Seacaucus.
Passaic	Upper Passaic County—West Milford, Wayne, Ringwood, Bloomingdale, Little Falls, Haledon, Pompton Lakes, Hawthorne, and Wanaque.
	Patterson, Prospect Park, and Clifton.
Sussex	Entire County.
Warren	Entire County.
Morris	Netcong, Dover, and Victory Gardens.
Mercer	City of Trenton.
Middlesex	Entire County.
New Mexico:	
Bernalillo	Within Bernalillo County, areas bounded by: (1) Eastern boundary is the Sandia Mountains; south to Kirtland Air Force Base; west to Wyoming Blvd.; and north to Indian School. (2) Eastern boundary is Wyoming Blvd; south to Kirtland Air Force Base; west to Louisiana at San Pedro at Louisiana; and north to Copper. (3) Eastern boundary is the Sandia Mountains; south to Indian School; west to Eubank; and north to the Bernalillo County line. (4) Eastern boundary is Eubank; south to Indian School; west to San Mateo; south to Indian School at Montgomery; and north to the Bernalillo County line. (5) Eastern boundary is San Mateo; south to the I–40 Freeway at Candelaria; west to Rio Grande and Edith; and north to Ortega Road. (6) Eastern boundary is Rio Grande River; south to Bridge Street; west to 98th Street; and north to I–40. (7) Eastern boundary is 98th Street; south to 122nd Street at Valley Road; west to 122nd Street; and north to I–40. (8) Eastern boundary is Tapia to Joe Sanchez Road; south to Rio Bravo; west to Coors; and north to Arenal. (9) Eastern boundary is Girard; south to Airport Terminal Road; west to I–25; and north to Coal. (10) Eastern boundary is Val Verde; south to Gibson to Smith; west to Girard; and north to Silver.
	Within Bernalillo County, areas bounded by: (1) Eastern boundary is Louisiana and San Pedro; south to Kirtland AFB and the Sunport; west to Girard to Val Verde; and north to Central and Anderson. (2) Eastern boundary is Wyoming; south to Central and Coal; west to I–25; and north to I–40 and Indian School. (3) Eastern boundary is Eubank; south to Indian School; west to Wyoming; and north to Montgomery. (4) Eastern boundary is Edith; south to Ortego Road; west to Rio Grande River; and north to the Bernalillo County line. (5) Eastern boundary is Rio Grande River; south to I–40; west to Petroglyphs; north to the Bernalillo County line. (6) Eastern boundary is Coors Road; south to Blake Road; west to 98th Street; and north to Bridge Blvd. (7) Eastern boundary to Tapia; south to Arenal; west to Coors; and north to Bridge Blvd. (8) Eastern boundary is Rio Grande River; south to Rio Bravo; west to Tapia to Joe Sanchez; and north to Bridge Blvd. (9) Eastern boundary is I–25; south to Isleta Indian Reservation; west to Coors; and north to Rio Bravo. (10) Eastern boundary is I–25; south to Rio Bravo; west to Rio Grande; and north to Caldelaria.
Doña Ana	City of Las Cruces.
Lea	Hobbs and Lovington.
Sandoval	Bernalillo, Cuba, and Rio Rancho.
Santa Fe	Entire County.
Torrance	Entire County.
San Juan	Entire County except the Alamo Navajo Reservation.
	The Alamo Navajo Reservation.
Navajo Nation (also see AZ, CO & UT).	Navajo Reservation, Navajo School Board.
Cibola	Pueblo Laguna Reservation.
Dulce	Jicarilla Apache Reservation.
New York:	
Bronx	Communities of:

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
	(1) University Heights.
	(2) Fordham.
	(3) Riverdale.
	(4) Morris Heights.
	(5) Highbridge.
	Mott Haven and surrounding areas of South Bronx.
	Districts 1, 2, 3, and 4.
	(1) 3rd Ave. and Courtland Ave. through E.161st Street; Grand Ave. through East Featherbed Lane; University Ave. through West 182nd Street; East 146th Street through 156th Street; West on St. Anns Ave. and Union Ave.
	(2) Fulton Ave. to Park Ave.
	(3) East 171st Street and Prospect Ave. through East 182nd.
	(4) East 183rd Street and East 187th St. to East Mosholu.
	(5) North on Longwood Ave. and Boston Rd and Jennings St.
	(6) Charlotte St. and White Plains Rd.
	(7) Sedwick Ave. and Goulden Ave. through West 242nd St.
	(8) West 183rd St. and Grand Concourse through Mosholu to Bruckner Blvd.
	(9) Mott Haven and Hunts Point (Community Board # 1 & 2).
	(10) Spuyten Duyvil (Community Board # 8); University Heights (Community Board # 7).
Manhattan	Mid-town Manhattan—Homeless Population.
	Washington Heights.
	An area bounded by 14th Street to the west; on the north by East of Broad Street and South of 14th Street and Lower East Side; East River across Delancey St. to Allen St., south on Allen St. to Pike St. to East River.
	An area bounded by 125 St. to 218 St, Riverside Drive to Harlem River, Edgecomb Ave, St Nicholas Ave; Washington Hgts: FDR Drive east, to Binery to the south.
	Lower Eastside, north of Broadway and south of 14th Street.
Kings	An area bounded by the Brooklyn Navy Yard on the north; Flatbush and Eastern Parkway on the south and west; and Ashland Place on the east.
	(1) Borough Park—Community Board 12.
	(2) Carnarsie—Community Boards 17 & 18.
	(3) Crown Heights—Community Boards 8 & 9.
Richmond	North Shore-Community Board 13.
Queens	Rockaway Peninsula.
	Northwestern Queens County area, Astoria and Jackson Heights.
Alleghany	Entire County.
Cattaraugus	Entire County.
Wyoming	Entire County.
Chautauqua	Entire County.
Chenango	Entire County.
Dutchess	Entire County.
Herkeimer	Cities of Herkeimer and Rome.
Oneida	City of Utica.
Monroe	City of Rochester.
Onondaga	City of Syracuse.
Rensselaer	Entire County.
Rockland	Village of New Square.
	The village of Haverstraw and outlying areas, the village of Nyak and outlying areas including Valley Cottage, Congeis, Piermont, and Sparkill.
Schenectady	City of Schenectady.
Orange	The Black Dirt Region of Goshen, Warwick, and Florida; and within the City of Middletown, an area bounded by West Main Street on the northwest, to Wickham Avenue on the northeast, south to Genung Street, and west to West Main Street.
Steuben	Entire County.
Yates	Entire County.
Sullivan	Entire County.
Wayne	Wolcott, Butler, Savannah, Huron, Rose Galen, Sodus, Lyons, Newark.
Westchester	Entire county, excluding the City of White Plains.
	City of White Plains.
Erie	City of Buffalo: Teen mothers and pregnant women attending the following high schools: Bennett, Lafayette, Grover Cleveland, Emmerson Vocational, South Park, Riverside, Seneca, Kensington, Alternative, City of Schools, Performing Arts, Buffalo Traditional, Hutch Technical, McKinley, Burgard, and City Honors.
Orleans	Entire County.
Genesee	Entire County.
Saratoga	Entire County.
Washington	Entire County.
Suffolk	Central Brookhaven, including Coram, Medford, North Bellport, Seldon, and Ridge.
Madison	Entire County.
Otsego	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
North Carolina:	
Buncombe	Asheville City School District and Buncombe County School District; Districts of Emma, Woodfin and Johnstown.
	Entire County except Asheville City and Emma, Woodfin, and Johnstown.
Caswell	Entire County.
Guilford	Greensboro.
	Entire County outside of Greensboro.
Macon	Entire County.
McDowell	Entire County.
Orange	Entire County.
Pamlico	Entire County.
Carteret	Entire County.
Craven	Entire County.
Jones	Entire County.
Rowan	Entire County.
Davison	Entire County.
Montgomery	Entire County.
Moore	Entire County.
Stanley	Entire County.
Transylvania	Entire County.
Henderson	Entire County.
Union	Monroe.
Wayne	Entire County.
Cumberland	Fayeteville.
Rutherford	Entire County.
Swain	Entire County.
Jackson	Entire County.
North Dakota:	
Barnes	Entire County.
Stutsman	Entire County.
Dickey	Entire County.
Eddy	Entire County.
Foster	Entire County.
Griggs	Entire County.
LaMoure	Entire County.
Logan	Entire County.
McIntosh	Entire County.
Benson	Spirit Lake Reservation.
	Entire County with the exception of the Spirit Lake Reservation boundary.
Ramsey	Entire County with the exception of the Spirit Lake Reservation boundary.
Wells	Entire County.
Ward	Minot Public School District #1 Boundary, which includes the Minot Air Force Base.
Sioux	Boundaries of Standing Rock Reservation.
Grant	Boundaries of Standing Rock Reservation.
Nelson	Entire County.
Steele	Entire County.
Traille	Entire County.
Grand Forks	Emerado, Larimore, Niagra, Northwood, Reynolds, Thompson, and rural portion of the county.
Cass	City of Fargo and West Fargo.
Ohio:	
Adams	Entire County.
Brown	Entire County.
Clermont	Entire County.
Clark	Entire County.
Montgomery	City of Dayton.
Cuyahoga	City of Cleveland: Glenville, Hough, Detroit-Shoreway, Clark-Fulton, and City of East Cleveland.
Darke	Entire County.
Greene	Entire County.
Shelby	Entire County.
Miami	Entire County.
Hamilton	City of Cincinnati: Neighborhoods of Over-the-Rhine, Mount Auburn, Price Hill, West End, Bond Hill, Roselawn, Avondale, Millvale, and Walnut Hills, Westwood, Camp Washington, Evanston, and East End, South Commonville Fairmont, Fay Apartments/English Woods, Winton Hills, Lincoln Heights, Lockland, and Forest Park.
Lake	Entire County.
Lawrence	Entire County.
Lorain	Towns of Lorain, Elyria, Oberlin, Wellington, Columbia Station, and South Amherst.
Medina	Entire County.
Wayne	Entire County.
Morgan	Entire County.
Washington	Entire County.
Pike	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Preble	Entire County.
Richland	Entire County.
Summit	City of Akron: Communities of North Akron, South Akron, West Akron, East Akron.
Guernsey	Entire County.
Monroe	Entire County.
Noble	Entire County.
Fairfield	Entire County.
Mahoning	Entire County.
Allen	Entire County.
Franklin	Linden-McKinley: a south Linden subdivision which is south of Morse Road, east of Interstate 71, north of East Fifth Avenue, and west of Conrail; Pincrest-Whitehall municipality which is south of East Fifth Avenue, east of James Road, north of Livingston Avenue, and west of Hamilton Road; St. Agnes which is the westside of Columbus bounded on the west by Outerbelt 270, east by the Scioto River, south by Clime Road and north by Interstate 70.
Oklahoma:	
Choctaw	Entire County.
McCurtain	Entire County.
Pushmataha	Entire County.
Creek	Entire County.
Okmulgee	Entire County.
Tulsa	An area bounded on the west by the Creek County line; on the south by the Okmulgee County line; on the east by Hwy 75, from the Okmulgee County line north to 71st St., east to Peoria Avenue, and north to 15th St; and on the north by 15th Street to the Arkansas River to the Creek County line
	East Tulsa, Southwest Tulsa, and North Tulsa.
Mays	Entire County.
Rogers	Entire County.
Wagner	Entire County.
Oklahoma	Oklahoma City: an area bounded on the north by North 50th; on the east by Bryant Avenue; on the south by South 44th; and on the west by Meridian Avenue.
Green	Entire County.
Payne	Entire County.
Seminole	Entire County.
Cleveland	Entire County.
Logan	Entire County.
Potawatomi	Entire County.
	The Sac, Fox and Absentee Shawnee Districts of Potawatomi County.
	Potawatomi Reservation, extending north to the North Canadian River; south to the South Canadian River; west to the Indian Meridian Line; and east to the county line.
Seminole	Entire County.
Cherokee	Entire County.
Mayes	Entire County.
Craig	Entire County.
Oregon:	
Hood River	Entire County (also serves Klickitat County in Washington State).
Wasco	Entire County.
Jackson	City of Medford and metropolitan area, and the Illinois Valley.
Josephine	Entire County.
Multnomah	City of Portland: an area bounded by N.E. Skidmore to the north; N.E. Tillamook to the south; 82nd Street to the east; and the Willamette River to the west.
	City of Portland: an area bounded by the Willamette River on the west; the Columbia River on the north; Holgate Blvd on the south; and N.E. 122nd Ave on the east (excluding the Enterprise Zone between N.E. Skidmore and N.E. Tillamook Streets).
	City of Portland: an area bounded by Holgate Ave on the north; the Multnomah County line to the south; SE 45th St. to the west; and 122nd Ave. to the east. After 122nd, the service area extends north to Burnside and out to S.E 162nd Avenue (Lents Junction).
	An area bounded by the Columbia River on the north; Multnomah County line on the east; 122nd Street on the west until Burnside Street, then moving east to 162nd Street, and south to the Clackamas County line.
Umatilla	The communities of Pendleton, Hermiston, Umatilla, and Stanfield.
Marrow	City of Boardman.
Washington	City of Hillsboro.
Jefferson	Warm Springs Indian Reservation.
Pennsylvania:	
Allegheny	Hill District, Uptown, Upper Hill, Middle Hill, Lower Hill, South Oakland, North Oakland, Clairton, City of Clairton, West Mifflin, Wilson, Jefferson, Glassport, Elizabeth, Dravesburg, Sto-Rox, McKees Rocks Borough, Kennedy Township, Esplen, Neville Island, and Stowe Township.
	Bloomfield, East Hills, East Liberty, Friendship, Garfield, Homewood, Larimer, Lawrenceville, Lincoln-Lemington-Belmar, Morningside, Baldwin.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
	City of Pittsburgh including: Allentown, Arlington, Arlington Heights, Beltzhoover, Beechview, Brookline, Banksville, Carrick, Duquesne Heights, Glen Hazel, Greenfield, Hays, Hazelwood, Lincoln Place, Knoxville, Mt. Washington, Mt. Oliver, Overlook, St Clair Village, South Side Flats, South Side Slopes; and the County communities: Aspenwall. Blawnox, Cheswick, East Deer, Etna, Fox Chapel, Frazer, Harmar, Indiana, Millvale, Oakmont, O'Hara, Shaler, Sharpsburg, Springdale Borough, Springdale Township, Verona, West Deer.
Beaver	Entire County.
Bedford	Entire County.
Bradford	Entire County.
Tioga	Entire County.
Butler	Entire County.
Centre	Entire County.
Clearfield	Entire County.
Fayette	Entire County.
Fulton	Entire County.
Huntingdon	Entire County.
Indiana	Entire County.
Lackawanna	Entire County.
Wayne	Entire County.
Pike	Entire County.
Susquehanna	Entire County.
Lehigh	Entire County.
Luzerne	Entire County.
Mercer	Entire County.
Snynder	Entire County.
Union	Entire County.
Mifflin	Entire County.
Philadelphia	City of Philadelphia—an area bounded by the Schuylkill River; north to Girard Avenue; west on Girard to Parkside Avenue; north on Parkside Avenue to Belmont Avenue; south on Belmont to Westminster Avenue; west on Wesminster to 50th Street; south on 50th Street to Spruce Street; east on Spruce to 45th Street; and south on 45th Street to the Schuylkill River.
	City of Philadelphia—an area bounded by Pine Street on the north; Broad Street on the east; Philadelphia Naval Base on the south; and Schuylkill River on the west.
	City of Philadelphia—North Central Philadelphia Empowerment Zone: 6th Street to 23rd Street, and from Montgomery Street to Poplar Street.
	City of Philadelphia—An area bounded on the north by Allegheny Avenue; on the south by Norris Street; on the east by 5th Street; and on the west by 17th Street, excluding the North Philadelphia Empowerment Zone area.
	City of Philadelphia—Frankford Area.
Venango	Entire County.
Washington	Entire County.
Greene	Entire County.
Westmoreland	Entire County.
Dauphin	City of Harrisburg.
Rhode Island:	
Bristol	Bristol, Warren, and Barrington.
Newport	Entire County.
Providence	Town of East Providence.
	City of Cranston.
	City of Central Falls, South and Southwest Providence.
	Towns of Burrillville, Johnston, North Providence, Smithfield, North Smithfield, Glocester, Scituate, and Foster.
Kent	The City of Warwick and the towns of Coventry and West Warwick.
South Carolina:	
Bamberg	Olar, Bamberg City, Denmark, Ehrhardt.
Charleston	West Ashley, downtown Charleston, and Charleston Nech area.
Greenville	City of Greenville: Communities of Nicholtown (including the Jesse Jackson Town Homes), Woodland-Pierce Homes, and Parker District (including Monaghan, San Souci).
Anderson	Honeapath.
Pickens	City of Pickens.
Greenville	Pleasant Valley.
Lancaster	Entire County.
Spartanburg	Entire County.
Sumter	City of Sumter: Sumter School District, Maysville, Dalzell, Wedgefield, Sahw Air Force Base, Pinewood, Rembert, within the eastern section of Sumter County.
Beauford	St. Helena.
Jasper	Robertville.
Greenwood	Greenwood City.
Saluda	Saluda City.
South Dakota:	
Brookings	Entire County.
Codington	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Hamlin	Entire County.
Lake	Entire County.
Minnehaha	Entire County.
Moody	Entire County.
McCook	Entire County.
Clark	Entire County.
Deuel	Entire County.
Grant	Entire County.
Kingsbury	Entire County.
Miner	Entire County.
Butte	Towns of Belle Fourche, Fruitdale, Newell, Nisland and Vale.
Harding	Towns of Buffalo and Reva.
Perkins	Towns of Bison and Lemmon.
Hughes	Entire County.
Hyde	Entire County.
Jones	Entire County.
Mellette	Entire County.
Stanley	Entire County.
Sully	Entire County.
Meade	Cities of Black Hawk and Sturgis.
Lawrence	Cities of Deadwood, Lead, Spearfish.
Custer	City of Custer.
Fall River	City of Hot Springs.
Haakon	City of Phillip.
Jackson	City of Kadoka.
Pennington	The cities of Box Elder, Ellsworth Air Force Base, Rapid Valley, Rapid City and a 15 mile radius.
	Rapid City and the communities of Box Elder and Rapid Valley within the incorporated limits of Rapid City.
Jackson	Pine Ridge Reservation.
Shannon	Pine Ridge Reservation.
Robert	Lake Traverse Reservation.
Day	Lake Traverse Reservation.
Marshall	Lake Traverse Reservation.
Clay	Entire County.
Lincoln	Entire County.
Turner	Entire County.
Union	Entire County.
Tennessee:	
Anderson	Andersonville, Briceville, Claxton, Clinton, Dutch Valley, Fairview, Grand Oaks, Lake City, Norris, Norwood.
Carroll	Entire County.
Fayette	Entire County.
Lauderdale	Entire County.
Madison	Entire County.
Obion	Entire County.
Tipton	Entire County.
Bedford	Shelbyville city limits and 10 miles around Shelbyville.
Lawrence	Lawrenceburg city limits and 10 miles around Lawrenceburg.
Giles	Pulaski city limits and 10 miles around Pulaski.
Hamilton	Communities of Soddy—Daisy, Cedar Hill, and the Avondale area of the City of Chattanooga.
Knox	North Knoxville.
Loudon	Entire County.
Roane	Entire County.
Shelby	Frayse, North Memphis, South Memphis, Midtown, Vincent, Alabaster, Columbiana.
Weakley	Entire County.
Gibson	Entire County.
Henry	Entire County.
Williamson	Franklin.
Wilson	Lebanon.
Cannon	Woodbury.
Cheatham	Ashland City.
Robertson	Springfield.
Rutherford	Murfreesboro and Smyrna.
Summer	Gallatin.
Trousdale	Hartsville.
Morgan	Entire County.
Tazewell	Campbell, Hancock, Claiborne, Scott.
Texas:	
Bexar	City of San Antonio—an area on the westside of San Antonio bounded by Woodlawn on the north; U.S. Highway 90 on the south; Interstate 35 on the east; and Callahan on the west.
	The communities of Fredericksburg II, Circle North, New Westwood, Terrell Plaza, Fort Sam and Mount Zion.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Brazos	Entire County.
Brooks	Entire County.
Jim Wells	Entire County.
Kleberg	Entire County.
Brown	Entire County.
Burnet	An area bounded to the east by the City of Tow; to the north by County Road 206; to the west by the City of Bertram; and to the south by Park Road off State Highway 281.
Williamson	School district boundaries of the cities of Taylor, Georgetown, and Leander as described as: (1) City of Taylor—an area bounded to the east by Morning Glory and Mariposa; to the north by State Highway 95 and the San Gabriel River; to the west by County Road 3349; and to the south by Janick Lane. (2) City of Georgetown—an area bounded to the east by San Gabriel River and State Highway 95; to the north by State Highway 195; to the west by County Road 241; and to the south by County Road 111. (3) City of Leander—an area bounded to the east by County Road 1431 and Sam Bass Road; to the north by State Highway 29; to the west by County Road 1431 West to City of Jonestown; and to the south by County Road 2222 and City Park Road.
Cameron	Entire County.
Willacy	Entire County.
Cochran	Entire County.
Garza	Entire County.
Collin	McKinney Independent School District.
Grayson	Entire County.
Rockwall	Entire County.
Dallas	The communities of: (1) Pleasant Grove—an area bounded by I–635 on the north and east; I–45 on the south; and I–30 on the west. (2) West Dallas—an area bounded by the Trinity River on the north; I–30 on the south; Jefferson Boulevard on the east; and Loop 12 on the west. (3) Irving—an area bounded by Walnut Hill Rd on the north; Hunter Ferrel St. on the south; Walton Walker (Loop 12) on the east; and Beltline Rd on the west. (4) North Oak Cliff—an area bounded by I–30 on the north; Camp Wisdom Road on the south; I–35 on the east; and Duncanville Road on the west.
El Paso	Rural communities of Fabens, San Elizario, Clint, Canitillo, and the following areas in the city limits of El Paso: (1) Socorro/Sparks—an area bounded by Horizon City on the north; I–10 on the south; Bufford Road on the east; and Avenue of the Americas on the south. (2) Northeast—an area bounded by New Mexico State line on the north; Montana Avenue on the south; Loop 375 on the east; and Patriot on the west. (3) Ysleta—an area bounded by I–10 on the north; Border Freeway on the south; Avenue of the Americas on the east; and Delta Drive on the west. (4) Central Area—an area bounded by Montana Avenue on the north; Mexico border on the south; Alameda Avenue on the east; and Paisano Avenue on the west. (5) Canutillo—an area bounded by Vinton Road to the north; Sunland Park to the south; I–10 on the east and the Rio Grande River on the west.
Fort Bend	Entire County.
Gray	Entire County.
Hutchinson	Entire County.
Randall	Entire County, except teen parents residing within Amarillo School District Boundaries. Teen parents residing within Amarillo School District Boundaries.
Potter	Entire County, except teen parents residing within Amarillo School District Boundaries. Teen parents residing within Amarillo School District Boundaries.
Harris	City of Houston: an area bordered by Tidwell on the north; Hardy and Maury on the east; Yale and Studewood on the west; and IH–10 on the south (also know as Fifth Ward). City of Humble: an area bordered on the north by Montgomery County line; on the east by the middle of Lake Houston; on the south by Beltway 8; and on the west by McKay Boulevard up to Spring Creek where it intersects the Montgomery County line. Communities of Galena Park and Jacinto City within the City of Houston: an area bordered on the north by the East Fork of the San Jacinto River; on the east by Liberty County; on the south by the north side of Indian Shores; and on the west to the middle of Lake Houston. Within Harris County: (1) Gulfton Area—an area bounded by Richmond Street on the north; S. Braeswood Street on the south; Newcastle on the east; and S. Gessner on the west; (2) Spring Branch—an area bounded by Highway 290 on the north; I–10 on the south; Wirt Road (Wirt to Kempwood, Kempwood to Bingle, Bingle to Highway 290) on the east; and Blalock/Campbell Road on the west. Within Harris County, an area bordered by: (1) Loop 610 on the north; Loop 610 West to North to East on the south; Hardy Road on the east; and Studewood Street on the west; (2) An area bounded by Tidwell Road on the north; Loop 610 on the south; Hardy Road on the east; and North Main Street on the west;

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
	(3) An area bounded by E. Mt. Houston Road; Lynnfield Road on the south; Hirsch Road on the East; and Hardy Road on the west.
Hays	Entire County.
Caldwell	Entire County.
Hood	Cities of Granbury, Cresson, Lipan, Paluxy, and Thorspring.
Erath	Entire County.
Palo Pinto	Entire County.
Lubbock	City of Lubbock: The Cherry Point neighborhood bordered by Loop 289 and East Municipal Drive on the north; East Broadway on the south; East Idalou Road on the east; and Yellowhouse Canyon on the west.
Mclennan	Eligible residents of an empowerment zone in the City of Waco identified as East Waco, and nearby north and south sections of the city.
Houston	Entire County.
Nacogdoches	Entire County.
Nueces	Entire County.
Scurry	Entire County.
Starr	Rio Grande City.
Duval	City of San Diego.
Jim Hogg	City of Hebronville.
Zapata	Zapata City.
Taylor	Abilene Independent School District boundaries.
Titus	Entire County.
Tom Green	Entire County.
Travis	Entire County.
Uvalde	Entire County.
Zavala	Entire County.
Brazoria	Entire County.
Nolan	Entire County.
Tarrant	Entire County.
Bowie	Entire County.
Utah:	
Carbon	City of Price.
Grand	City of Moab.
San Juan	City of Blanding.
Davis	Davis County School District Boundary.
Utah:	Entire County.
Box Elder (also see Franklin County, Idaho).	Brightman City, Fielding, Garden City, Garland, Thatcher, and Tremonton.
Cache (also see Franklin County, Idaho).	College Ward, Hyde Park, Hyrum, Logan, Mendon, Millville, Nibley, North Logan, Richmond, River Heights, Smithfield, and Wellsville.
Navajo Nation (also see AZ, CO, & NM).	Navajo Reservation, Navajo School Board.
Washington (also see Colorado City in Mohave County, AZ).	St. George and Hurricane.
Vermont:	
Caledonia	Entire County.
Essex	Entire County.
Orleans	Entire County.
Lamoille	Entire County.
Orange	Entire County.
Washington	Entire County.
Windham	Entire County.
Virginia:	
Buchanan	Entire County.
Dickerson	Entire County.
Russell	Entire County.
Washington	Entire County.
Fairfax	Cities of Fairfax and Falls Church and South Fairfax County from I–495 to Prince William County.
City of Alexandria	City of Alexandria—Rt. 1 Corridor.
Isle of Wight	Entire County.
Southhampton	Entire County.
City of Franklin	Entire City.
City of Suffolk	Entire City.
York	Entire County.
James City County	Entire County.
City of Williamsburg	Entire City.
Arlington	Entire County.
Loudoun	Entire County.
Prince William	Entire County.
Roanoke	City of Roanoke.
Newport News	City of Newport News—from Jefferson Street east.
Wise	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Orange	Entire County.
Washington:	
Asotin (also see Nez Perce County, ID).	Entire County.
Chelan	Entire County.
Douglas	Entire County, except for Community of Bridgeport.
	Bridgeport.
Yakima	City of Yakima.
	Towns of Grandview, Sunnyside, Mabton, Granger, Toppenish and White Swan.
Clark	Entire County.
Ferry	Entire County.
Pend Oreille	Entire County.
Steven	Entire County.
Grant	Entire County.
Island	Entire County.
Skagit	Entire County.
San Juan	Entire County.
King	City of Seattle: Ballard and West Seattle—an area bounded on the east by Lake Washington; on the west by Puget Sound; on the north by 145th Street; on the southwest by Roxbury Street; on the southeast by Juniper Street (excluding the garden communities of Holly Park, Yesler Terrace, Rainier Vista and High Point).
	City of Seattle: Central District of Seattle bounded on the north by East Madison St and Lake Washington Blvd; on the south by Interstate 90; on the east by Lake Washington; and on the west by Rainier Avenue South, South Main Street, Interstate 5, James Street and 12th Avenue.
	City of Seattle: Yesler Terrace, Holly Park, High Point, and Rainier Vista Public Housing Districts.
	Communities of Kent, Renton, Auburn, Skyway, Tukwilla, Southeast King County, and Federal Way.
Walla Walla	The City of Walla Walla, Farm Labor Homes Community and College Place.
Kitsap	South Kitsap School District (Discovery High School), students who attend Olympic College, and City of Port Orchard.
	Cities of Bremerton, West Bremerton and Poulsbo.
	Port Madison Indian Reservation.
	Port Gamble S'Klallam Reservation.
Klickitat (also see Hood River and Wasco Counties, OR).	Entire County.
Pierce	School Districts: Clover Park; Bethel; Peninsula; the teen parents attending the Tacoma School District and the Woman's Correctional Center in Purdy, Washington.
Snohomish	City of Everett.
Spokane	The City of Spokane and surrounding metropolitan area; and students attending Community Colleges in the City of Spokane.
Whatcom	Entire County.
Jefferson	Entire County.
Clallam	Entire County.
West Virginia:	
Brooke	Entire County.
Marshall	Entire County.
Wetzel	Entire County.
Cabel	Cities of Huntington and Barboursville.
Lincoln	Towns of Harts and Ranger.
Wayne	Towns of Crum and Fort Gay.
Marion	City of Fairmont.
Randolph	Entire County.
Tucker	Entire County.
Preston	Entire County.
Monongalia	Entire County.
Wyoming	Entire County.
Wisconsin:	
Adams	Entire County.
Columbia	Entire County.
Dodge	Entire County.
Juneau	Entire County.
Sauk	Entire County.
Dane	Entire County.
Barron	Entire County.
Chippewa	Entire County.
Dunn	Entire County.
Grant	Entire County.
Richland	Entire County.
Kenosha	City of Kenosha—neighborhoods of Wilson Heights and Bain.
Brown	Entire County.
Manitowac	Entire County.
Forest	Entire County.
Oneida	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Vilas	Entire County.
Pierce	Entire County.
Polk	Entire County.
Pepin	Entire County.
St. Croix	Entire County.
Milwaukee	City of Milwaukee—an area bounded on the north by Capital Drive; on the east by Hwy 43; on the south by Wisconsin Ave.; and on the west by Sherman.
Waukesha	Entire County.
Kesheua	Menominee Reservation.
Rock	Entire County.
Bayfield	Red Cliff Reservation.
Vilas	Lac du Flambeau Reservation.
Wyoming:	
Big Horn	Entire County.
Hot Springs	Entire County.
Washakie	Entire County.
Converse	Entire County.
Goshen	Entire County.
Natrona	Entire County.
Niobrara	Entire County.
Platte	Entire County.
Fremont	Wind River Indian Reservation.
Campbell	Entire County.
Teton	Entire County.
Sublette	Entire County.
Laramie	Entire County.
District of Columbia	(1) In Ward One, an area bounded on the northeast by Spring Road; on the northwest by Piney Branch Parkway; on the east by Michigan Avenue to Florida Avenue; on the southeast by S Street; and on the west by Rock Creek.
	(1) In Ward Two an area bounded on the northeast by New Jersey, Florida Avenue and S Street; on the northwest by Florida Avenue; on the east by Florida Avenue and Southwest Freeway; on the southeast by the Anacostia River; and on the west by the Potomac River.
	(1) In Ward Four an area bounded on the northeast by Eastern Avenue; on the northwest by Western Avenue; on the southeast by Michigan Avenue; and on the southwest by Rock Creek.
	(2) In Ward Five an area bounded on the northeast by Eastern Avenue; on the northwest by South Dakota; on the southeast by the Anacostia River; on the southwest by Florida Avenue; and on the west by Harewood Road.
	Sections of Wards One, Two and Four, which includes the areas of Shepherd Park, Upper Cordoza, Adams Morgan, and Mount Pleasant.
Commonwealth of Puerto Rico:	
Municipality of Carolina	Entire Municipality.
Municipality of Cayey	Entire Municipality.
Municipality of Cidra	Entire Municipality.
Municipality of Luquillo	Entire Municipality.
Municipality of Trujillo Alto	Entire Municipality.
Municipality of Humacao	Entire Municipality.
Municipality of Ceiba	Entire Municipality.
Municipality of Juncos	Entire Municipality.
Municipality of Loiza	Entire Municipality.
Municipality of Canovanas	Barrio Cuboy in Canovanas.
Municipality of Rio Grande	Entire Municipality.
Municipality of Naguabo	Entire Municipality.
Municipality of Toa Baja	Entire Municipality.
Municipality of Catano	Bajo Costo.
	Barrio Palmas in the Municipality of Catano.
Municipality of Coamo	Las Flores in the Municipality of Coamo.
Municipality of Vega Alta	Vega Alta (Muchauchal and Santa Ana).
Municipality of San Juan	Cantera in the Municipality of San Juan.
	Barrios: Hato Rey Norte and the sub-barrios of Puerto Nuevo, Nemesio R. Canales Public Housing Project.
Municipality of Ponce	Entire Municipality.
Municipality of Santa Isabel	Entire Municipality.
Municipality of Bayamon	Entire Municipality.
Municipality of Barceloneta	Entire Municipality.
Municipality of Guaynabo	Entire Municipality.
Municipality of Sabana Grande	Entire Municipality.
Municipality of Caguas	Entire Municipality.
Municipality of San Sebastian	Entire Municipality.
Municipality of Arecibo	Entire Municipality.
Virgin Islands: Island of St. Croix	St. Croix.

[FR Doc. 02–5948 Filed 3–13–02; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0070]

Agency Information Collection Activities; Proposed Collection; Comment Request; Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) 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 regulations for in vivo radiopharmaceuticals used for diagnosis and monitoring.

DATES: Submit written or electronic comments on the collection of information by May 13, 2002.

ADDRESSES: Submit electronic comments on the collection of information to *http://accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm.* Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

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 requests 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, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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.

Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring (OMB Control No. 0910–0409)—Extension

FDA is requesting OMB approval of the information collection requirements contained in 21 CFR 315.4, 315.5, and 315.6. These regulations require manufacturers of diagnostic radiopharmaceuticals to submit information that demonstrates the safety and effectiveness of a new diagnostic radiopharmaceutical or of a new indication for use of an approved diagnostic radiopharmaceutical.

In response to the requirements of section 122 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), FDA published a final rule (64 FR 26657, May 17, 1999) amending its regulations by adding provisions that clarify FDA's evaluation and approval of in vivo radiopharmaceuticals used in the diagnosis or monitoring of diseases. The regulation describes the kinds of indications of diagnostic radiopharmaceuticals and some of the criteria that the agency would use to evaluate the safety and effectiveness of a diagnostic radiopharmaceutical under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and section 351 of the Public Health Service Act (42 U.S.C. 262) (the PHS Act). Information about the safety or effectiveness of a diagnostic radiopharmaceutical enables FDA to properly evaluate the safety and effectiveness profiles of a new diagnostic radiopharmaceutical or a new indication for use of an approved diagnostic radiopharmaceutical.

The rule clarifies existing FDA requirements for approval and evaluation of drug and biological products [1] already in place under the authorities of the act and the PHS act. The information, which is usually submitted as part of a new drug application (NDA) or biologics license application (BLA) or as a supplement to an approved application, typically includes, but is not limited to, nonclinical and clinical data on the pharmacology, toxicology, adverse events, radiation safety assessments, and chemistry, manufacturing, and controls. The content and format of an application for approval of a new drug are set forth in § 314.50 (21 CFR 314.50). Under 21 CFR part 315, information required under the act and needed by FDA to evaluate the safety and effectiveness of in vivo radiopharmaceuticals still needs to be reported.

Based on the number of submissions (that is, human drug applications and/or new indication supplements for diagnostic radiopharmaceuticals) that FDA received during fiscal years 2000 and 2001, FDA estimates that it will receive approximately two submissions annually from two applicants. The hours per response refers to the estimated number of hours that an applicant would spend preparing the information required by the regulations. Based on FDA's experience, the agency estimates the time needed to prepare a complete application for a diagnostic radiopharmaceutical to be approximately 10,000 hours, roughly one-fifth of which, or 2,000 hours, is estimated to be spent preparing the portions of the application that would be affected by these regulations. The regulation does not impose any additional reporting burden for safety and effectiveness information on diagnostic radiopharmaceuticals beyond the estimated burden of 2,000 hours because safety and effectiveness information is already required by § 314.50 (collection of information approved by OMB until February 28, 2002, under OMB Control No. 0910–

[1] The information collection requirements for biological products are no longer submitted for approval to OMB in this package, but are included under OMB Control No. 0910–0124.

0001). In fact, clarification in these regulations of FDA's standards for evaluation of diagnostic radiopharmaceuticals is intended to streamline overall information collection burdens, particularly for diagnostic radiopharmaceuticals that may have well-established, low-risk safety profiles, by enabling manufacturers to tailor information submissions and avoid unnecessary clinical studies. Table 1 of this document contains estimates of the annual reporting burden for the preparation of the safety and effectiveness sections of an application that are imposed by existing regulations. The burden totals do not include an increase in burden. This estimate does not include the actual time needed to conduct studies and trials or other research from which the reported information is obtained.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
315.4, 315.5, and 315.6	2	1	2	2,000	4,000
Total					4,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 5, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–6095 Filed 3–13–02; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1672]

Ashford Blood Bank, Inc.; Revocation of U.S. License No. 0740–001

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the biologics license (U.S. License No. 0740–001) issued to Ashford Blood Bank, Inc., for the manufacture of Whole Blood and Red Blood Cells. Ashford Blood Bank, Inc., did not respond to a notice of opportunity for a hearing on a proposal to revoke its license.

DATES: The revocation of the biologics license (U.S. License No. 0740–001) is effective March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph L. Okrasinski, Jr., Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is revoking the biologics license (U.S. License No. 0740–001) issued to Ashford Blood Bank, Inc., Ashford Medical Center, suite 401–402, Santurce, PR 00907, for the manufacture of Whole Blood and Red Blood Cells. FDA initiated proceedings to revoke the biologics license because: (1) Authorized FDA employees were unable to gain access to either of the establishment's locations for the purpose of carrying out a required inspection of the facility as mandated under § 600.21 (21 CFR 600.21), and (2) manufacturing of products had been discontinued to an extent that a meaningful inspection or evaluation could not be made. In a certified, return-receipt letter dated October 28, 1997, FDA notified an authorized official of the firm that FDA had suspended the establishment's biologics license for the manufacture of Whole Blood and Red Blood Cells at its facilities at Santurce, PR, and Bayamon, PR. This action was based on the fact that significant deviations from the regulations were noted by FDA's San Juan district office during inspections of the facilities conducted August 19, 1997, through September 17, 1997, and September 9, 1997, through September 17, 1997, respectively. FDA's San Juan district office attempted to conduct additional inspections of the two Ashford facilities. On May 1, 1998, FDA investigators attempted to inspect the satellite collection facility at Bayamon, PR, but found that the facility was no longer in operation, and the manufacturing of Whole Blood and Red Blood Cells had been discontinued. On November 23, 1999, FDA investigators attempted to inspect the main facility in Santurce, PR, but found that the facility was no longer in operation and the manufacturing of Whole Blood and Red Blood Cells had been discontinued.

In certified, return-receipt letters dated April 13, 2000, sent to the establishment's facility at Santurce, PR, and also to the Ashford Blood Bank, Inc., P.O. Box 195034, San Juan, PR, 00919, FDA notified an authorized official of the firm that FDA's attempt to conduct inspections of the two facilities at Santurce, PR and Bayamon, PR were unsuccessful because the facilities were no longer in operation and the manufacture of Whole Blood and Red Blood Cells had been discontinued. The letter advised the establishment that, under § 601.5(b)(l) and (b)(2) (21 CFR 601.5(b)(1) and (b)(2)) (now codified as § 601.5(b)(1)(i) and (b)(1)(ii)), when FDA finds that authorized employees have been unable to gain access to an establishment for the purpose of carrying out an inspection required under § 600.21, or the manufacturing of products or of a product has been discontinued to an extent that a meaningful inspection could not be made at the establishment, FDA may initiate proceedings for license revocation. FDA also stated that a meaningful inspection could not be made at the establishment's facilities and issued to the establishment a notice of FDA's intent to revoke U.S. License No. 0740–001 and announced its intent to offer an opportunity for a hearing.

Under § 12.21(b) (21 CFR 12.21(b)), FDA published in the **Federal Register** of February 6, 2001 (66 FR 9087), a notice of opportunity for a hearing on a proposal to revoke the biologics license of Ashford Blood Bank, Inc. In the notice, FDA explained that the proposed license revocation was based on the inability of authorized FDA employees to conduct a meaningful inspection of the establishment because it was no longer in operation, and noted that documentation in support of license revocation had been placed on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The notice provided the establishment 30 days to submit a written request for a hearing and 60 days to submit any data and information

justifying a hearing. The notice provided other interested persons with 60 days to submit written comments on the proposed revocation. The establishment did not respond within the 30-day time period with a written request for a hearing, and under § 12.21(b), the 30-day time period prescribed in the notice of opportunity for a hearing may not be extended. No other comments were received.

Accordingly, under 21 CFR 12.38, section 351 of the Public Health Service Act (42 U.S.C. 262), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the biologics license (U.S. License No. 0740–001) issued to Ashford Blood Bank, Inc., is revoked, effective March 14, 2002.

Dated: March 6, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–6096 Filed 3–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA 668–02–1610–DO–083A]

Monument Advisory Committee Meeting Schedule

AGENCY: Bureau of Land Management, Interior; United States Forest Service, Agriculture.

ACTION: Notice of meetings.

SUMMARY: The Bureau of Land Management (BLM) and United States Forest Service (USFS) announces the schedule of meetings for the Advisory Committee to the Santa Rosa and San Jacinto Mountains National Monument (hereinafter referred to as ''National Monument''). The meetings will be held on the following dates:

Saturday, April 6, 2002
Saturday, June 1, 2002
Saturday, August 3, 2002
Saturday, October 5, 2002
Saturday, December 7, 2002
Saturday, February 1, 2003

The meetings will be held at the Palm Desert City Hall Council Chambers, located at 73–510 Fred Waring Drive, Palm Desert, California, 92260. The meetings will take place from 9 a.m. until 4:00 p.m. There will be a half hour dedicated to public input during both the first half hour of the meetings and at the last half hour of the meetings. A sign up sheet will be located at the meeting room on the day of the meeting. Speakers wishing to comment publicly should sign the public comment sign-in sheet provided at the location of the meetings and provide a written copy of their statement. All committee and subcommittee meetings, including field examinations, will be open to the general public, including representatives of the news media. Any organization, association, or individual may file a statement with or appear before the committee and its subcommittees regarding topics on a meeting agenda—except that the chairperson or the designated federal official may require written comments to the Advisory Committee. The meetings will have agendas developed and available to the public prior to the meeting date. The agendas for each meeting will be located on the Bureau of Land Management web page for the Santa Rosa San Jacinto National Monument (*http://www.ca.blm.gov/palmsprings/*.) The subject matter of each meeting will focus on the development and implementation of the Santa Rosa San Jacinto Mountains National Monument Management Plan.

The Monument Advisory Committee (MAC) is a committee of citizens appointed to provide advice to the BLM and USFS with respect to preparation and implementation of the management plan for the National Monument as required in the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431nt). The act authorized establishment of the MAC with representative members from State and local jurisdictions, the Agua Caliente Band of Cahuilla Indians, a natural science expert, local conservation organization, local developer or building organization, the Winter Park Authority and a representative from the Pinyon Community Council.

The meetings will be open to the public with attendance limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretations or other reasonable accommodations should notify the contact person listed below in advance of the meeting. Persons wishing to make statements will need to sign up at the meeting location.

DATES: April 6, 2002; June 1, 2002; August 3, 2002; October 5, 2002; December 7; 2002; February 1, 2003; All meetings will take place from 9 a.m. to 4 p.m with a morning public comment period from 9 to 9:30 a.m. and an afternoon public comment period from 3:30 to 4 p.m.

ADDRESSES: The meetings will be held in the Council Chambers of the Palm Desert City Hall, 73–510 Fred Waring Drive, Palm Desert, California, 92260.

FOR FURTHER INFORMATION CONTACT: Written comments should be sent to Miss Danella George, Santa Rosa San Jacinto Mountains National Monument Manager, Bureau of Land Management, P.O. Box 581260, North Palm Springs, CA 92258; or by fax at (760) 251–4899 or by e-mail at *dgeorge@ca.blm.gov.* Information can be found on our webpage: *http://www.ca.blm.gov/palmsprings/.* Documents pertinent to this notice, including comments with the names and addresses of respondents, will be available for public review at the Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Santa Rosa and San Jacinto Mountains National Monument was established by act of Congress and signed into law on October 24, 2000. The National Monument was established in order to preserve the nationally significant biological, cultural, recreational, geological, educational and scientific values found in the Santa Rosa and San Jacinto Mountains. This legislation established the first monument to be jointly managed by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 affects only Federal lands and Federal interests located within the established boundaries.

The 272,000 acre Monument encompasses 86,400 acres of Bureau of Land Management lands, 64,400 acres of Forest Service lands, 23,000 acres of Agua Caliente Band of Cahuilla Indians lands, 8,500 acres of California Department of Parks and Recreation lands, 35,800 acres of other State of California agencies lands, and 53,900 acres of private land. The BLM and the Forest Service will jointly manage Federal lands in the National Monument in coordination with the Agua Caliente Band of Cahuilla Indians, other federal agencies, state agencies and local governments.

Dated: February 7, 2002.

Danella George,

Designated Federal Official, National Monument Manager.

Laurie Rosenthal,

District Ranger, San Jacinto Ranger District, San Bernardino National Forest.

[FR Doc. 02–6165 Filed 3–13–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; GPO–02–0046; WAOR–22434, WAOR–22369]

Public Land Order No. 7515; Modification of Secretarial Orders Dated October 10, 1905 and February 2, 1912; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies two Secretarial orders insofar as they affect 97.95 acres of public lands withdrawn for the Bureau of Reclamation's Yakima-Tieton Reclamation Project. The action will open the lands to exchange only.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6189.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders dated November 10, 1905 and February 2, 1912, which withdrew lands for the Bureau of Reclamation's Yakima-Tieton Reclamation Project, are hereby modified insofar as they affect the following described public lands to allow for exchange in accordance with Section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended, 43 U.S.C. 1716 (1994):

Willamette Meridian

T. 14 N., R. 16 E.,
Sec. 12, SE¼SW¼.
T. 12 N., R. 17 E.,
Sec. 6, lot 10.
T. 13 N., R. 17 E.,
Sec. 10, SE¼NE¼ and E½E½SE¼SW¼NE¼;
Sec. 20, NE¼NW¼NW¼.

The areas described aggregate 97.95 acres in Yakima County.

2. The lands described in paragraph 1 are hereby made available for exchange in accordance with section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended by the Federal Land Exchange Facilitation Act of 1988, 43 U.S.C. 1716 (1994), subject to valid existing rights, the provisions of existing withdrawals, other segregation of record, and the requirements of applicable law.

Dated: February 15, 2002.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–6119 Filed 3–13–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA 668–02–1610–DO–083A]

Notice of intent To Prepare a Land and Resource Management Plan

AGENCY: Bureau of Land Management; Palm Springs-South Coast Field Office, and the United States Forest Service, San Bernardino National Forest.

ACTION: Notice of intent to prepare a Land and Resource Management Plan (LRMP) for the Santa Rosa and San Jacinto Mountains National Monument, designated by Congress on October 24, 2000. This action will require a single Environmental Impact Statement (EIS). The planning area is located in Riverside County, California.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) and United States Forest Service (USFS) intend to prepare an LRMP with an associated EIS for the Santa Rosa and San Jacinto Mountains National Monument located within the BLM Palm Springs-South Coast Field Office and the San Bernardino National Forest. This planning activity encompasses approximately 150,800 acres of Federally managed public land. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), the Forest and Rangeland Renewable Resources Planning Act of 1974, the National Forest Management Act of 1976, the Santa Rosa and San Jacinto Mountains National Monument Act of 2000, and BLM and USFS management policies. The BLM and USFS will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning issues, develop planning criteria, and will include an evaluation of the existing BLM and USFS land and resource management plans in the context of the needs and interests of the public and conservation of natural and cultural resources specified in the legislation.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria may be submitted in writing to the address listed below. All public meetings will be announced through the local news media, newsletters, and the BLM web site (*www.ca.blm.gov*) at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

Public Participation: Public meetings will be held throughout the plan scoping and document preparation period. In order to ensure local community participation and input, public meeting locations will be rotated among the communities located within the Santa Rosa and San Jacinto Mountains and the cities of the Coachella Valley, Riverside County. Meeting sites will also be provided throughout southern California commensurate with interest in the National Monument. Early and ongoing participation is encouraged and will help determine the future management of Federally managed public lands within the Santa Rosa and San Jacinto Mountains National Monument. In addition to the ongoing public participation process, formal opportunities for public participation will be provided through comment on the alternatives and upon publication of the draft LRMP/EIS. Written comments will be accepted and considered throughout the entire planning process.

ADDRESSES: Written comments should be sent to Mr. James G. Kenna—Field Manager, Palm Springs-South Coast Field Office, Bureau of Land Management, P.O. Box 581260, North Palm Springs, CA 92258; or by fax at (760) 251–4899 or by email at *cdunning@ca.blm.gov.* Documents pertinent to this proposal, including comments with the names and addresses of respondents, will be available for public review at the Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours 7:45 a.m. to 4:30 p.m.,

Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Ms. Connell Dunning at (760) 251–4817, *cdunning@ca.blm.gov*, or Elena Misquez at (760) 251–4810, *emisquez@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: The creation of the Santa Rosa and San Jacinto Mountains National Monument along with the changing needs and interests of the public necessitates a separate stand-alone plan for the Monument. This action requires a maintenance action to BLM's California Desert Conservation Area Plan (as amended in 1980) to change its planning boundary and an amendment to the USFS's San Bernardino National Forest Land and Resource Management Plan. A management plan for the Santa Rosa and San Jacinto Mountains National Monument will facilitate coordination and efficiency between the BLM and USFS as joint Federal leads, and to focus collaborative efforts with state and local government, the Agua Caliente Band of Cahuilla Indians and interested public. This joint BLM–USFS planning document will require a single EIS and two separate Records of Decision (ROD).

Preliminary issues and management concerns have been identified by BLM and USFS personnel, other agencies, and in meetings with individuals and user groups. The preliminary issues identified thus far represent the USFS and BLM's knowledge to date on the existing issues and concerns with current management, but are not limited to these. The major issue themes that will be addressed in the plan effort include:

- Integrating monument management with community, tribal, and other agency needs.
- Recreation/visitor use and safety.
- Access and transportation on the public lands; management and protection of public land resources; and balancing multiple uses.

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan.
2. Issues resolved through policy or administrative action.
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase.

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in outdoor recreation, archaeology, paleontology, wildlife and plants, lands and realty, hydrology, soils, geographic information systems, rangeland management, minerals and geology, forestry, sociology and economics. Where necessary, outside expertise may be used.

Dated: October 11, 2001.

Danella George,

Acting Field Manager, Bureau of Land Management.

Gene Zimmerman,

Forest Supervisor, Forest Service, USDA.

[FR Doc. 02–6166 Filed 3–13–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities Under OMB Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of data collection submission.

SUMMARY: In compliance with the Paperwork Reduction act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 15, 2002.

ADDRESSES: Comments on this information collection should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington, DC 20503. A copy of your comments should also be directed to the Bureau of Reclamation, Pacific Northwest Regional Office, Attention Ms. Vicki Kellerman, 1150 N. Curtis Road, Suite 100, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed collection of information form, contact Ms. Vicki Kellerman at (208) 378–5326.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of Reclamation's functions, including whether the information will have practical use; (b) the accuracy of Reclamation's estimated time and cost burdens of the proposed collection of information, including the validity of the methodoly and assumptions used; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including increased use of automated collection techniques or other forms of information technology.

Title: Ririe Reservoir Recreation Survey.

Abstract: Ririe Reservoir is located on Willow Creek, a minor tributary of the Snake River in Bonneville County of eastern Idaho. Ririe Reservoir has recreation attributes that serve Idaho Falls, Ririe, and southeastern Idaho, as well as out-of-state visitors. Primary summer activities consist of boating, swimming, fishing, camping, and picnicking. In general the survey will be used to determine carrying capacity for recreation uses on both Reclamation lands and water, and necessary management actions related to recreation, as identified in the Resource Management Plan for this reservoir. Further, the survey will determine if and when boat ramps, docks, trails, parking, and other facilities need to be expanded for recreation during the next 10 years and if the expansion can be accomplished without detriment to natural, recreational, and cultural resources.

Description of respondents: Ririe Reservoir recreationists from Idaho Falls, Ririe, southeastern Idaho, and an indeterminate diversity of out-of-state visitors to Ririe Reservoir.

Frequency: This is a one-time voluntary survey.

Estimated completion time: An average of 30 minutes per respondent.

Annual responses: 250 respondents.

Annual burden hours: 125.

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. Reclamation will display a valid OMB control number on the forms.

The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on December 13, 2001 (66 FR 64454). Reclamation did not receive any comments on this collection of information during the comment period.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Jerrold D. Gregg,

Area Manager.

[FR Doc. 02–6113 Filed 3–13–02; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: 60-day notice of information collection under review: new collection; Domestic Preparedness Training Evaluation and Follow-up.

The Department of Justice, Office of Justice Programs, Office for Domestic Preparedness has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until May 13, 2002.

If you have comments, suggestions, or need a copy of the proposed information collection instrument or additional information, please contact Patricia A. Malak, 202–616–3461, Office for Domestic Preparedness, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposal collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information:

(1) Type of information collection: New collection

(2) The title of the form/collection: Domestic Preparedness Training Evaluation and Follow-up.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: The Office for Domestic Preparedness, Office of Justice Programs, U.S. Department of Justice is sponsoring the collections. A form number has not been assigned.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals who participate in Office for Domestic Preparedness-sponsored training other: None.

Abstract: The data collection effort is designed to obtain feedback from participants, who attend Office for Domestic Preparedness-sponsored training, on enhanced knowledge and/or skills, course improvements, and actions to use the information to improve personal, agency, or jurisdictional preparedness to respond to a terrorism incident. Approximately 4 months after the training, a sample of participants will be asked to complete a follow-up survey on how useful the training has been to them in performing their job actions they have taken to enhance response capacities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply.* It is estimated that approximately 21,390 respondents will be asked to complete the training evaluation forms and that will take approximately 15 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete evaluation forms is approximately 5,347 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530– or via facsimile at (202) 514–1590.

Dated: March 8, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–6109 Filed 3–13–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Nominations for Vacancy of Unexpired Term of Investment Counseling Member

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 20 U.S.C. 1142, provides for the establishment of an ''Advisory Council on Employee Welfare and Pension Benefit Plans'' (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multi employer plan); three representatives of employers (at least one of whom shall be

representative of employers maintaining or contributing to multi employer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The un-expired term of one member of the Council who has been serving as the investment-counseling representative is now open to nominations as the member has resigned from the Advisory Council. There are two years remaining of the un-expired term. The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse ERISA Advisory Council membership.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent the field specified in the preceding paragraph, may submit recommendations to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N–5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before April 10, 2002. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization.

Signed at Washington, DC this 11th day of March 2002.

Ann L. Combs,

Assistant Secretary of Labor Pension and Welfare Benefits Administration

[FR Doc. 02–6164 Filed 3–13–02; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–037)]

National Environmental Policy Act; NASA Routine Payloads for Expendable Launch Vehicles

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of draft environmental assessment (DEA) for launch of NASA routine spacecraft as payloads on expendable launch vehicles.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA has prepared and issued a DEA for launch of NASA routine spacecraft as payloads on expendable launch vehicles. This DEA addresses the potential environmental impacts associated with preparing and implementing the launch of missions that are designated routine payloads on U.S. expendable launch vehicles from existing U.S. facilities using established procedures. The spacecraft covered by this DEA (referred to as routine payload spacecraft) would meet rigorously defined criteria ensuring that the spacecraft, their operation, and their decommissioning would not present any new or substantial environmental and safety concerns. A Routine Payload Checklist (RPC) is used to exclude missions from consideration as routine payloads if they include any extraterrestrial sample return; would be launched on a vehicle and launch pad combination not covered in this DEA; carry radioactive sources that could not be approved by the NASA Office of Safety and Mission Assurance (OSMA) Nuclear Flight Safety Assurance Manager (NFSAM); cause the manifested launch rate (per year) for a particular launch vehicle to exceed the rate previously approved and permitted at the launch sites; require the construction of any new facilities (or substantial modification of existing facilities); utilize hazardous materials in quantities exceeding the Envelope Payload Characteristics (EPCs); utilize potentially hazardous material whose type or amount would not be covered by new or existing local permits or is not included within the definition of the Envelope Spacecraft (ES); release material other than propulsion system exhaust or inert gases into the atmosphere; suggest the potential for any substantial impact on public health and safety not covered by this DEA; have the potential for substantial effects on the environment outside the United States; utilize an Earth-pointing laser system that does not meet the requirements for safe operations according to American National Standards Institute (ANSI) analysis techniques; carry live or inactive disease-causing biological agents; or have the potential to create substantial public controversy related to environmental issues. The proposed launches would occur from existing launch facilities at Cape Canaveral Air Force Station (CCAFS), Florida, and Vandenberg Air Force Base (VAFB), California, during the period 2002 to 2012. Spacecraft that comply with the RPC would utilize materials, quantities of materials, launch vehicles, and operational characteristics that are consistent with normal and routine spacecraft preparation and flight activities at VAFB, CCAFS, and Kennedy Space Center (KSC), Florida. Therefore, the environmental impacts of launching routine payload spacecraft would fall within the range of routine, ongoing, and previously documented impacts associated with approved programs that have been determined not to be significant. The purpose and need for this proposed action is to fulfill NASA's mission for Earth exploration, space exploration, technology development, and scientific research. The scientific missions associated with NASA routine payload spacecraft could not be accomplished without launching orbital and interplanetary spacecraft.

DATES: Comments must be provided in writing to NASA on or before April 15, 2002.

ADDRESSES: Comments should be addressed to Mark R. Dahl, Program Executive, NASA Headquarters, Code SM, Washington, DC 20546. Hard copy comments are preferred, but comments may be sent by electronic mail to *mdahl@hq.nasa.gov.* The DEA may be reviewed at the locations listed under the supplementary information in this notice.

FOR FURTHER INFORMATION CONTACT: Mark R. Dahl, 202–358–4800; *mdahl@hq.nasa.gov.* The DEA also is available in Acrobat® format at *http://spacescience.nasa.gov/admin/pubs/routine_EA/index.htm.*

SUPPLEMENTARY INFORMATION: U.S. space and Earth exploration is integral to NASA's strategic plan for carrying out its mission. NASA is also committed to the further development of advanced, low-cost technologies for exploring and

utilizing space. To fulfill these objectives, a continuing series of scientific spacecraft would need to be designed, built, and launched into Earth orbit or towards other bodies in the Solar System. These spacecraft would flyby, encounter, orbit about, land on, or impact with these bodies to collect various scientific data that would be transmitted to Earth via radio for analysis. The scientific missions associated with NASA routine payload spacecraft could not be accomplished without launching such scientific spacecraft.

The proposed action is comprised of preparing, launching, and decommissioning missions designated NASA routine payload spacecraft. The design and operational characteristics and, therefore, the environmental impacts of routine payload spacecraft would be rigorously bounded. Routine payload spacecraft would utilize materials, launch vehicles, facilities, and operations that are normally and customarily used at Vandenberg Air Force Base (VAFB), California, and Cape Canaveral Air Force Station (CCAFS) and Kennedy Space Center (KSC), Florida. The routine payload spacecraft would use these materials, launch vehicles, facilities, and operations only within the scope of activities already approved or permitted. The scope of this DEA includes all spacecraft that would meet specific criteria on their construction and launch, would accomplish the requirements of NASA's research objectives, and would not present new or substantial environmental impacts or hazards. These spacecraft would meet the limitations set forth in the Routine Payload Checklist (RPC), which was developed to delimit the characteristics and environmental impacts of this group of spacecraft. Preparation and launch of all spacecraft that are defined as routine payloads would have environmental impacts that fall within the range of routine, ongoing, and previously documented impacts associated with approved missions that have been determined not to be significant. Alternative spacecraft designs that exceed the limitations of the RPC may have new or substantial environmental impacts or hazards and are not covered by this DEA. Foreign launch vehicles would require individual consideration, review, and separate environmental analysis, and were not considered to be reasonable alternatives for the purpose of this routine payload spacecraft DEA. The No-Action Alternative would mean that NASA would not launch scientific spacecraft missions defined as routine payloads using specific criteria and thresholds. NASA would then continue to propose spacecraft missions for individualized review under NEPA. Such duplicate analyses and redundant documentation for spacecraft missions that meet the limitations of the RPC, however, would not present any new information or identify any substantially different environmental impacts.

The expendable launch vehicles (ELVs) proposed for launching the routine payload spacecraft represent domestic (U.S.) ELVs that would be suitable for launching the routine payload spacecraft, would potentially be available during the 2002 to 2012 period, have documented environmental impacts, and would utilize existing launch facilities. The ELVs included in this action are the Atlas series, Delta series, Taurus, Athena series, Pegasus XL, and Titan II. These launch vehicles would accommodate the desired range of payload masses, would provide the needed trajectory capabilities, and would provide highly reliable launch services. Individual ELVs would be carefully matched to the launch requirements of each particular routine payload spacecraft. For the NASA routine spacecraft missions, the potentially affected environment for normal launches includes the areas at and in the vicinity of the two launch sites, CCAFS in Florida, and VAFB in California. For normal launches of routine payloads under the proposed action, the environmental impacts would be associated principally with the exhaust emissions from the launch vehicles. These effects would include short-term impacts on air quality within the exhaust cloud and near the launch pads, and the potential for acidic deposition on the vegetation and surface water bodies at and near each launch complex, particularly if a rain storm occurred. To minimize the potential for disturbance of protected wildlife species, consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act of 1973 (as amended) is required. Routine payload processing and launch activities would not require any additional permits or mitigation measures beyond those already existing, or in coordination, for VAFB or CCAFS launches.

There are no direct or substantial environmental impacts, including cumulative impacts, associated with the proposed action that have not already been covered by NEPA documentation for the existing launch sites, launch vehicles, launch facilities, and payload processing facilities. NASA missions covered by this DEA would be manifested at VAFB or CCAFS and would be within the total number of launch operations previously analyzed in launch vehicle and launch site NEPA documents.

The DEA may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW., Washington, DC 20546 (202–358–0167).

(b) Spaceport U.S.A., Room 2001, John F. Kennedy Space Center, FL 32899. Please call Penny Myers beforehand at 321–867–9280 so that arrangements can be made.

(c) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

The DEA may be examined at the following NASA Centers by contacting the appropriate Freedom of Information Act Office:

(d) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–1181).

(e) NASA, Dryden Flight Research Center, P.O. Box 273, Edwards, CA 93523 (661–258–3689).

(f) NASA, Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2755).

(g) NASA, Goddard Space Flight Center, Greenbelt Road, Greenbelt, MD 20771 (301–286–6255).

(h) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(i) NASA, Langley Research Center, Hampton, VA 23681 (757–864–2497).

(j) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–1837).

(k) NASA, Stennis Space Center, MS 39529 (228–688–2164).

Limited hard copies of the DEA are available, on a first request basis, by contacting Mr. Dahl at the address or telephone number indicated herein.

Jeffrey E. Sutton,

Assistant Administrator for Management Systems.

[FR Doc. 02–6169 Filed 3–13–02; 8:45 am]

BILLING CODE 7510–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27495]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 8, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to

provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 2, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant application(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 2, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc., et al. (70–9897)

Allegheny Energy, Inc. (''Allegheny''), a registered holding company, Allegheny Ventures, Inc. (''Ventures''), a direct wholly owned nonutility subsidiary company of Allegheny, both located at 10435 Downsville Pike, Hagerstown, Maryland 21740; and Allegheny Energy Supply Company, L.L.C. (''AE Supply''), 4350 Northern Pike, Monroeville, Pennsylvania 15146–2841, a direct wholly owned generating subsidiary company except by order under section 3(a)(2) of the Act and direct held by Allegheny; (collectively, ''Applicants'') have filed a post-effective amendment under sections 6(a) and 7, of the Act, and rules 53 and 54 under the Act.

By order dated December 31, 2001 (HCAR No. 27486) (''Order''), the Commission authorized, among other things, through July 31, 2005 (''Authorization Period''): (1) Allegheny to issue up to $1 billion in equity securities [1] and (2) Allegheny and/or AE Supply to issue short-term debt [2] and long-term debt in an aggregate amount up to $4 billion. Applicants now seek to amend the authorization granted in the Order.

Specifically, Applicants now make the following requests:

(1) Allegheny to issue up to an aggregate of $1 billion at any one time outstanding through the Authorization Period to issue and sell, common stock or options, warrants or other stock purchase rights exercisable for common stock or contracts to purchase common stock in public or privately negotiated for cash or as consideration for the acquisition of equity securities or assets of other companies, provided in section 32 and 33 of the Act and under rule 58; and

(2) Allegheny and AE Supply seek to modify the Order to extend the maturity of the Notes from 270 days to 364 days.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–6103 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

[1] Specifically, the Order stated, ''Allegheny may issue common stock or options, warrants or other stock purchase rights exercisable for common stock in public or privately negotiated transactions for cash or as consideration for the equity securities or assets of other companies, provided that the acquisition of securities of the equity securities or assets has been authorized in this proceeding, a separate proceeding, or is exempt by the Act or the rules under the Act.''

[2] The Order generally provided that short-term debt will not have a maturity of less than one day and not more than 364 days. The Order also provided that notes payable to banks would have a maturity of not more than 270 days after the date of issuance or renewal (''Notes'').

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–13841]

Issuer Delisting; Notice of Application for Withdrawal From Listing and Registration on the American Stock Exchange LLC (the Rottlund Company, Inc., Common Stock, Par Value $.10 Per Share)

March 8, 2002.

The Rottlund Company, Inc., a Minnesota corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, par value, $.10 per share (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

On March 5, 2002, the Board of Directors of the Issuer (''Board'') approved a resolution to withdraw the Issuer's Security from the Amex. On January 24, 2002, the Issuer commenced a tender offer to purchase any and all of the outstanding shares of its Security, pursuant to the terms and conditions set forth in the Issuer's Tender Offer Statement filed with the Commission (the ''Offer''). The Offer expired on March 6, 2002 and, as a result, the Issuer no longer meets Amex's required maintenance standards concerning the number of registered shareholders of the Security. In addition, the Issuer also cites the following reasons for withdrawal of its Security from the Amex; (i) the Security has had historically low trading prices and trading volume; (ii) the costs of remaining a publicly-traded company are significant; (iii) the Issuer has not been able to realize the benefits associated with being a publicly-traded company; and (iv) as a result of the merger, the Issuer will no longer have any public shareholders. Consequently, the Issuer has not made alternative arrangements for the trading of the Security following its delisting from the Amex.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Minnesota, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing and registration under Section 12(b) of the Act [3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before March 29, 2002 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–6163 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

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 meeting during the week of March 4, 2002: An additional closed meeting was held on Tuesday, March 5, 2000 at 5:45 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 meeting. 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 meeting.

The subject matter of the closed meeting held on Tuesday, March 5, 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 11, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–6215 Filed 3–11–02; 4:47 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45524; File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03]

Self-Regulatory Organizations; the Depository Trust Company, the Options Clearing Corporation, National Securities Clearing Corporation, Emerging Markets Clearing Corporation, Government Securities Clearing Corporation, and MBS Clearing Corporation; Notice of Filing of Proposed Rule Changes Seeking Authority To Enter Into a Multilateral Cross-Guaranty Agreement

March 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 14, 2000, February 20, 2001, June 26, 2001, June 27, 2001, September 21, 2001, and September 25, 2001, The Depository Trust Company (''DTC''), The Options Clearing Corporation (''OCC''), National Securities Clearing Corporation (''NSCC''), Emerging Markets Clearing Corporation (''EMCC''), Government Securities Clearing Corporation (''GSCC''), and MBS Clearing Corporation (''MBSCC'') (collectively referred to as the ''clearing corporations''), respectively, filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes (File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2000–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03) as described in Items I, II, and III below, which items have been prepared primarily by DTC, OCC, NSCC, EMCC, GSCC, and MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify the clearing corporations' rules to enable them to enter into a multilateral cross-guaranty agreement (''Multilateral Agreement'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In their filings with the Commission the clearing corporations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The clearing corporations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

At the present time, there are limited cross-guaranty agreements (''bilateral agreements'') in effect between:

(1) DTC and NSCC (forming part of the DTC–NSCC Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement that also provides for the netting of settlement payments and the collateralization of transactions processed through the facilities of DTC and NSCC);[3]

(2) MBSCC and Participants Trust Company;[4]

(3) NSCC and each of MBSCC, GSCC and International Securities Clearing Corporation (''ISCC'');[5]

(4) NSCC and OCC;[6] and

(5) EMCC and each of NSCC, GSCC, and ISCC.[7]

In general, each clearing agency that is a party to a bilateral agreement provides the other clearing agency with a limited guaranty of the obligations of any entity that is a member of both clearing agencies. This means that if a common member fails and if one clearing agency winds up its business with the common member with assets of the common member in excess of the common member's liabilities to the clearing agency and the other clearing agency winds up its business with the common member with liabilities of the common member in excess of the

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release Nos. 36867 (February 21, 1996) [File No. SR–DTC–96–06] and 36866 (February 21, 1996) [File No. SR–NSCC–96–03](orders amending rules and cross-guaranty agreement to accommodate same-day funds settlement).

[4] Participants Trust Company has been merged into DTC. Securities Exchange Act Release No. 38604 (May 9, 1997) [File No. SR–PTC–97–01].

[5] ISCC has ceased operations and is no longer a registered clearing agency. Securities Exchange Act Release Nos. 37616 (August 28, 1996) [File Nos. SR–MBSCC–96–02, SR–GSCC–96–03 and SR–ISCC–96–04] and 39020 (September 4, 1997) [File No. SR–NSCC–97–11].

[6] Securities Exchange Act Release No. 39022 (September 4, 1997) [File Nos. SR–OCC–97–17 and SR–NSCC–97–12].

[7] Securities Exchange Act Release No. 42180 (November 29, 1999) [File No. SR–EMCC–99–7] and 37616 (August 28, 1996) [File Nos. SR–NSCC–96–02, SR–GSCC–96–03, and SR–ISCC–96–04].

common member's liabilities, (i) the clearing agency with the excess pays the clearing agency with the deficiency an amount equal to the lesser of the excess or the deficiency, and (ii) the amount paid by the clearing agency with the excess to the clearing agency with the deficiency becomes an obligation of the common member to the clearing agency with the excess which the clearing agency with the excess may satisfy if necessary (thereby reimbursing itself for the amount paid to the clearing agency with the deficiency) from the assets of the common member. In this way, through the mechanism of a limited cross-guaranty and a compensating reimbursement obligation, the assets of a common member at one clearing agency in excess of its liabilities to that clearing agency may be made available to satisfy the liabilities of the common member to another clearing agency where the common member has a deficiency of assets to satisfy its liabilities.

Background

The proposed Multilateral Agreement is similar in purpose to the existing bilateral agreements but differs in form, scope, and operation because (i) all of the parties to the several bilateral agreements will be parties to the Multilateral Agreement, (ii) all of the transactions of common members with any of the clearing corporations will be subject to the limited cross-guaranties of the Multilateral Agreement, (iii) all of the assets of common members with any of the parties to the Multilateral Agreement will be subject to application pursuant to the provisions of the Multilateral Agreement, (iv) all of the parties to the Multilateral Agreement will rank *pari passu* in terms of the payment of their respective guaranty obligations and entitlements, and (v) all such guaranty obligations and entitlements will be (A) calculated by DTC (based on information provided by the clearing agencies) pursuant to a formula set forth in the Multilateral Agreement and (B) settled through the facilities of DTC upon instructions from the clearing agencies required to make guaranty payments.

Set forth below is a description of the material terms and conditions of the Multilateral Agreement:

If a clearing agency that is a party to the Multilateral Agreement ceases to act for or suspends a person (''ceases to act'') and if that person is a member or participant of two or more clearing agencies (''common member''), such clearing agency must give each other clearing agency a notice (''default notice'') that it has ceased to act for such common member (thereafter, ''defaulting member''). Each other clearing agency that also ceases to act for the defaulting member within a period of ten business days after the default notice is given (''participating clearing agency'') will have fifteen business days to deliver to each other participating clearing agency a statement (''information statement'') that sets forth the positive or negative sum derived (after application of any applicable liquidation procedures) from adding the amounts (specified in the Multilateral Agreement) owed by the participating clearing agency to the defaulting member as of the close of business on the day on which such participating clearing agency ceased to act for such defaulting member and subtracting the amounts (specified in the Multilateral Agreement) owed by the defaulting member to the participating clearing agency as of the close of business on such date. The resulting amount is the ''available net resources'' of such participating clearing agency with respect to such defaulting member.

Each participating clearing agency with positive available net resources (''payor clearing agency'') has an obligation to make a payment (''guaranty obligation'') to each participating clearing agency with negative available net resources, and each participating clearing agency with negative available net resources (''payee clearing agency'') will have an entitlement to receive a payment (''guaranty entitlement'') from each participating clearing agency with positive available net resources, in an amount determined by a formula set forth in the Multilateral Agreement which: (i) Limits the aggregate guaranty obligation of any payor clearing agency to the amount of its positive available net resources and prorates the aggregate guaranty obligations of all payor clearing agencies (based on their available net resources) if all positive available net resources of all payor clearing agencies exceeds all negative available net resources of all payee clearing agencies and (ii) limits the aggregate guaranty entitlement of any payee clearing agency to the amount of its negative available net resources and prorates the aggregate guaranty entitlements of all payee clearing agencies (based on their available net resources) if the negative available net resources of all payee clearing agencies exceeds the positive available net resources of all payor clearing agencies.

Within two business days after the end of the period for submitting information statements with the information on the available net resources of the participating clearing agencies, DTC, acting for the participating clearing agencies whether or not DTC is a participating clearing agency with respect to any particular claim under the Multilateral Agreement and using only the information on available net resources contained in the information statements, will calculate the guaranty obligations and the guaranty entitlements of the participating clearing agencies in accordance with the formula set forth in the Multilateral Agreement and will deliver a report thereon to each of the participating clearing agencies. Two business days after that, DTC, acting on appropriate payment instructions from the payor clearing agencies, will debit their settlement accounts at DTC the amounts of their guaranty obligations and will credit the settlement accounts of the payee clearing agencies at DTC the amounts of their guaranty entitlements. Such debits and credits are then netted and settled with all other debits and credits to the settlement accounts of the participating clearing agencies on the day of settlement. All of the clearing agencies are or will be prior to the execution of the Multilateral Agreement participants of DTC.

It is important to note that a clearing agency cannot assert a claim and cannot be obligated to make or be entitled to receive a payment unless it ceases to act for a defaulting member. Each clearing agency will determine on the basis of its own rules whether or not to cease to act for a defaulting member. Generally, a clearing agency may cease to act for a defaulting member to protect the interests of the clearing agency, its other members or participants, and the national system for the clearance and settlement of securities transactions if, among other things, the defaulting member (a) has failed to pay a settlement debit, (b) has failed to pay or perform any other obligation to the clearing agency or (c) has become the subject of an insolvency proceeding or has become a ''failed member'' within the meaning of the Federal Deposit Insurance Corporation Improvement Act of 1991 (*e.g.* it ceases to meet its obligations when due even if it has not become the subject of a formal insolvency proceeding). Ceasing to act for a member or participant is a serious measure which clearing agencies do not take lightly or do for minor defaults. Accordingly, by requiring that a clearing agency cease to act for a defaulting member before the procedures of the Multilateral Agreement can be implemented, the Multilateral

Agreement ensures that the payment obligations of payor clearing agencies and the reimbursement obligations of defaulting participants to payor clearing agencies will not be triggered by minor defaults which do not pose a threat to the interests of the clearing agencies, their members or participants, or to the national system for the clearance and settlement of securities transactions.

As the foregoing description of the process for determining and satisfying a claim under the Multilateral Agreement indicates, no clearing agency would ever be required under the Multilateral Agreement to deliver assets or the proceeds of assets of a defaulting member to another clearing agency except for assets or the proceeds thereof in excess of the obligations and liabilities of the defaulting member to the first clearing agency and then only up to the amount needed to discharge the liabilities and obligations of the defaulting member to the second clearing agency. In substance and effect, the Multilateral Agreement provides a mechanism for using the assets of a member or participant of any clearing agency to secure the obligations and liabilities of such member or participant, first, to such clearing agency and, second, to other clearing agencies to the extent of any excess assets. The Multilateral Agreement, therefore, should reduce risk to the clearing agencies (and to the national system for the clearance and settlement of securities transactions) because a defaulting common member may have positions spread across the clearing agencies in such manner as to cause its available net resources at one or more clearing agencies to be positive even though its available net resources at one or more other clearing agencies are negative.

The Multilateral Agreement also provides for subsequent adjustments in guaranty obligations and guaranty entitlements among participating clearing agencies if information is discovered which, if known at the time of the initial calculation, would have changed the amounts of such guaranty obligations and guaranty entitlements, subject to certain conditions and limitations as described below.

If at any time within four years after any payment is made with respect to a guaranty obligation any participating clearing agency has any information that could result in a change in the calculation of such payment, such participating clearing agency must give each other participating clearing agency a notice thereof (''adjustment notice''). Within a period of ten business days after the adjustment notice is given, each participating clearing agency must deliver to each other participating clearing agency (and to DTC if DTC is not a participating clearing agency with respect to such default) a statement (''supplemental information statement'') which sets forth (i) the amount of the available net resources of such participating clearing agency with respect to the defaulting member as of the close of business on the day on which such participating clearing agency ceased to act for such defaulting member but taking into account the effect, if any, of the information in the adjustment notice and (ii) the amount of its available net resources, if any, as of the close of business on the day it received the adjustment notice.

Within two business days after the end of the period for submitting supplemental information statements with the information on the available net resources of the participating clearing agencies, DTC, acting for the participating clearing agencies (whether or not DTC is a participating clearing agency with respect to such default) and using only the information on available net resources contained in the supplemental information statements, will recalculate the guaranty obligations and guaranty entitlements of the participating clearing agencies in accordance with the same formula originally used to calculate the guaranty obligations and guaranty entitlements of the participating clearing agencies and will deliver a report thereon to the participating clearing agencies. However, no participating clearing agency that is required to make a payment as a result of any recalculation of guaranty obligations and guaranty entitlements with respect to a prior default will be required to make any payment in excess of the positive amount of its available net resources on the date it received the adjustment notice plus any cash payments it previously received or minus any cash payments it previously paid pursuant to the terms of the Multilateral Agreement with respect to the same default. Two business days after that, DTC, acting on appropriate instructions from the participating clearing agencies required to make adjustment payments as a result of the recalculation of guaranty obligations and guaranty entitlements described above will debit their settlement accounts the amounts they are obligated to pay and will credit the settlement accounts of the participating clearing agencies entitled to receive adjustment payments the amounts they are entitled to receive. Such debits and credits will then be netted and settled with all other debits and credits to the settlement accounts of the participating clearing agencies on the day of settlement.

As the foregoing description of the process for adjusting guaranty obligations and guaranty entitlements under the Multilateral Agreement indicates, a clearing agency will never be required to use its own assets to pay the claim of any other clearing agency against a defaulting member. Only the available net assets of the defaulting member will ever be used for this purpose. So, if as a result of a recalculation of guaranty obligations and guaranty entitlements, a participating clearing agency which was a payor clearing agency has an increased payment obligation or a participating clearing agency which was a payee clearing agency is now required to make a payment, the amount of that payment will be limited to the net assets of the defaulting member then in the possession of the participating clearing agency plus the net amount of any payments it previously received from other participating clearing agencies regarding the same claim.

Any clearing agency other than DTC may withdraw from the Multilateral Agreement upon ten days' advance written notice. Any clearing agency which resigns as a participant of DTC will also cease to be a party to the Multilateral Agreement effective upon such resignation. DTC may terminate the Multilateral Agreement entirely on one year's advance written notice. However, any such withdrawal or resignation will not affect the obligations of a withdrawing or resigning clearing agency with respect to a claim for which a default notice was delivered prior to such withdrawal or resignation and any such termination does not affect the obligations of any clearing agency with respect to a claim for which a default notice was delivered prior to such termination.

In conjunction with the Multilateral Agreement, NSCC, EMCC, GSCC, MBSCC, and OCC will be terminating the bilateral agreements so that there will be no issues of conflict or priority with the limited cross-guaranty provisions of the Multilateral Agreement. DTC and NSCC will enter into a Seconded Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement (''New DTC–NSCC Agreement''). The New DTC–NSCC Agreement will modify and supercede the current Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement dated February 21,

1996,[8] between DTC and NSCC (''Old DTC–NSCC Agreement''). The New DTC–NSCC Agreement will delete the limited net resources cross-guaranty provisions of the Old DTC–NSCC Agreement so that the limited net resources cross-guaranty provisions of the Multilateral Agreement will be the only such provisions of this type between DTC and NSCC and among DTC, NSCC, and the other parties to the Multilateral Agreement.

Pursuant to the Multilateral Agreement, a clearing agency party may be entitled to receive a guaranty payment from one or more other parties to the Multilateral Agreement with respect to the obligations of a defaulting member. However, if a clearing agency party receives a guaranty payment pursuant to the Multilateral Agreement, it will have a contingent obligation to refund some or all of such guaranty payment under two circumstances (each colloquially referred to as a ''clawback''):

(i) A repayment as a result of a recalculation of the guaranty obligations and guaranty entitlements of participating clearing agencies, which, as stated above, could take place at any time up to four years after the guaranty payment is received; or

(ii) A payment or repayment as a result of a judicial determination that the defaulting member did not owe a participating clearing agency some or all of the amount of the charge covered by the guaranty payment, which, as explained below, could take place at any time up to six years after such charge.

The Multilateral Agreement provides that if a court of competent jurisdiction determines that an amount paid by a payor clearing agency to a payee clearing agency was not paid on account of an amount owed by the defaulting member to the payee clearing agency, (i) the payee clearing agency will repay such amount (which may be some or all of the guaranty payment it received from the payor clearing agency) to the payor clearing agency or (ii) if so ordered by a court, the payee clearing agency shall pay such amount to the defaulting member or its legal representative (*e.g.,* a trustee or receiver).

There is no time limit expressed in the Multilateral Agreement within which a payee clearing agency can be required to make such court-ordered repayment to the payor clearing agency or payment to the defaulting member or its legal representative because the parties to the Multilateral Agreement cannot by contract among themselves bind any court or any third party seeking relief in any court to any such time limit. Accordingly, the time within which a payee clearing agency could be required to make such payment or repayment would be the time within which a third party may bring a claim for such relief (*i.e.,* the statutory limitations period applicable to such claim). Although it is difficult to predict how a claim that the payee clearing agency improperly charged the defaulting member and thereby received a guaranty payment from a payor clearing agency for an amount that the defaulting member did not in fact owe to the payor clearing agency would be framed, it is probable that it would be framed as a claim in contract (*i.e.,* that the charge was not a proper charge under the rules of the payee clearing agency). Under the rules of each clearing agency, such rules constitute a contract between such clearing agency and its members or participants and are binding on all parties. In New York, which is the most likely venue of any proceeding and the law that would most likely govern any claim, the statutory limitations period applicable to a claim on contract is generally six years from the time of the breach.

Although, as just discussed, a clawback could occur up to four to six years after a payee clearing agency receives a payment, as a practical matter, it is extremely unlikely that it would take (i) four years for participating clearing agencies to make all necessary adjustments in the calculation of guaranty obligations and guaranty entitlements under the Multilateral Agreement or (ii) six years for a defaulting member or its legal representative to assert a claim against a payee clearing agency that an amount was improperly charged against such defaulting member. Nevertheless, because MBSCC does not currently mutualize risk among its participants and a payment of such amount from its own resources would have the economic effect of charging all participants for such costs, MBSCC must make appropriate arrangements to deal with a clawback if it ever occurs.

GSCC and MBSCC are proposing to amend their rules regarding clawbacks. The following is a summary of the amendments proposed by GSCC and the amendments proposed by MBSCC.

GSCC

GSCC is proposing to amend its rules to provide it with two options in dealing with a clawback:

Option 1

The proposed rule change would give GSCC the option to apply any guaranty payment that it receives pursuant to the Multilateral Agreement upon receipt. If GSCC chooses this option:

a. the members that would have been assessed in the absence of the guaranty payment will be required to reimburse GSCC for any amount subject to a clawback pro rata based on the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from such guaranty payment;

b. the obligations of the members referred to in (a) above will be secured by requiring that such members must make and maintain additional deposits to the clearing fund in amounts equal to the benefits they received (in terms of the reduction or elimination of assessments made or that would have been made against them) from the guaranty payment;

c. to deal with the possibility that a shortfall may occur in the situation where the additional clearing fund deposit of a particular member referred to in (a) above is no longer available at the time a clawback occurs (because, for example, that member became insolvent, and its entire clearing fund deposit was used to cover losses incurred by GSCC), GSCC may treat such shortfall as an ''other loss'' pursuant to GSCC Rule 4, Section 8(g); and

d. to deal with the fact that, at least theoretically, a clawback may not occur until four years (in the case of a recalculation of guaranty obligations and guaranty entitlements) to six years (in the case of a court determination of an improper charge) after receipt of a guaranty payment, the additional deposits made, pursuant to (b) or (c) above, by the members that would have been assessed must be retained by GSCC until GSCC is satisfied that (i) GSCC is no longer subject to a clawback under the Multilateral Agreement and (ii) the members are therefore no longer subject to a corresponding obligation to reimburse GSCC for the amount of any such clawback; and

e. GSCC has the right (i) to waive the obligation of the members to make and maintain additional deposits to the clearing fund to secure an obligation on their part to reimburse GSCC for the amount of any clawback and/or (ii) to pay the clawback from the resources of

[8] Securities Act Release Nos. 36867 (February 21, 1996), 61 FR 7288 [File No. SR–DTC–96–06] and 36866 (February 21, 1996), 61 FR 7288 [File SR–NSCC–96–03] (orders amending rules and cross-guaranty agreement to accommodate same-day funds settlement).

GSCC without recourse to any member or their deposits to the clearing fund.

Option 2

The proposed rule change will give GSCC the option to retain the guaranty payment and not apply it to its losses and/or liabilities arising from the default of the member until after the end of the clawback period. If GSCC chooses this option:

a. the members would be assessed pursuant to GSCC's loss sharing rule and

b. at the end of the clawback period, GSCC would distribute the guaranty payment to the members who were assessed (whether or not they are still members at the time of such distribution) pro rata the amounts of such assessments.

Given that similar repayment issues are presented by GSCC's cross-margining arrangements, GSCC is proposing to make comparable changes in the rules with respect to the repayment of cross-margining payments.

MBSCC

To deal with clawbacks, MBSCC is proposing to amend its rules as follows:

a. upon receipt of a guaranty payment, MBSCC will reduce or eliminate by an equivalent amount the assessments made or that otherwise would be made against the original contra-side participants pro rata as now provided in Rule 4 of Article III of its rules;

b. the original contra-side participants will be required to reimburse MBSCC for any amount subject to a clawback pro rata the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from the guaranty payment;

c. MBSCC will secure the obligations of the original contra-side participants referred to above by requiring that such original contra-side participants must make and maintain additional deposits to the participants fund in amounts equal to the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from the guaranty payment;

d. to deal with the possibility that the participants fund deposit of a particular original contra-side participant referred to in (3) above may no longer be available at the time the clawback occurs (because, for example, that participant became insolvent and its entire participant fund deposit was used to cover losses incurred by MBSCC), the remaining original contra-side participants referred to in (3) above would be required to replenish the deficiency by making additional deposits to the participants fund pro rata their additional deposits to the participants fund pursuant to (3) above;

e. to deal with the fact that, at least theoretically, a clawback may not occur until four years (in the case of a recalculation of guaranty obligations and guaranty entitlements) to six years (in the case of a court determination of an improper charge) after receipt of a guaranty payment, the additional deposits made, pursuant to (3) or (4) above, by original contra-side participants must be retained by MBSCC until MBSCC is satisfied that (i) MBSCC is no longer subject to a clawback under the Multilateral Agreement and (ii) the original contra-side participants are therefore no longer subject to a corresponding obligation to reimburse MBSCC the amount of any such clawback; and

f. MBSCC has the right to (i) waive the obligation of the original contra-side participants to make and maintain additional deposits to the participants fund to secure an obligation on their part to reimburse MBSCC for the amount of any clawback and/or (ii) to pay any clawback from the resources of MBSCC without recourse to any original contra-side participants or their deposits to the participants fund.

Section 17A(a)(2)(A) of the Act directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions and to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of transactions.[9] Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[10]

The clearing agencies believe that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations promulgated thereunder because they will: (i) Reduce the risk of loss to clearing agencies resulting from the failure or default of a common member, (ii) mitigate the risk to the national clearance and settlement system resulting from such failure or default and the impact of such failure or default on clearing agencies and their other members or participants, (iii) foster cooperation and coordination among clearing agencies and other persons involved in the clearance and settlement of securities transactions, and (iv) assist clearing agencies in safeguarding the securities and funds in their custody or control or for which they are responsible.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

The clearing agencies do not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule changes, and none have been received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of DTC, OCC, NSCC, EMCC, GSCC, and MBSCC. All submissions should refer to the File Nos. SR–DTC–

[9] 15 U.S.C. 78q–1(a)(2)(A).

[10] 15 U.S.C. 78q–1(b)(3)(A).

2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03 and should be submitted by April 4, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6162 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45519; File No. SR–NASD–2001–48]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. To Clarify That the Nasdaq Limited Partnership Qualitative Listing Requirements Are Applicable to Limited Partnerships Listed on Both the National Market and the SmallCap Market

March 7, 2002.

On August 7, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to clarify that Nasdaq's limited partnership qualitative listing requirements are applicable to limited partnerships listed on both the National Market and the SmallCap Market.

The proposed rule change was published for comment in the **Federal Register** on December 13, 2001.[3] No comments were received on the proposal. In this order, the Commission is approving the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[4] and, in particular, with the requirements of Section 15A(b)(6).[5]

In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act[6] in that the proposal is designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. The Commission believes that the adoption of uniform listing requirements for limited partnerships will assist Nasdaq in maintaining an efficient and open market.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASD–2001–48), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6160 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45526; File Nos. SR–NASD–2002–21; SR–NYSE–2002–09]

Self-Regulatory Organizations: Notice of Filing of Proposed Rule Changes by the National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc. Relating to Research Analyst Conflicts of Interest

March 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 13, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASDR''), and on February 27, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations (''SROs''). On March 7, 2002, NASDR submitted Amendment No. 1 to its proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The SROs propose to amend their rules to address research analyst conflicts of interest. NASDR is proposing to amend the rules of the NASD to establish new NASD Rule 2711 (''Research Analysts and Research Reports'') to address research analyst conflicts of interest. The NYSE is proposing amendments to NYSE Rule 472 (''Communications with the Public''), which will place prohibitions and/or restrictions on the Investment Banking Department, Research Department, and Subject Company Relationships and Communications, and will impose additional disclosure requirements on members, member organizations, and associated persons preparing research reports and making public appearances.

The NYSE is also proposing amendments to NYSE Rule 351 (''Reporting Requirements''), which will require members and member organizations to submit to the Exchange, annually, a written attestation, that the member or member organization has established and implemented written procedures reasonably designed to comply with the provisions of NYSE Rule 472.

Below is the text of the proposed rule changes. Proposed new language is in italic; proposed deletions are in [brackets].

A. NASD Proposed Rule Text

Rule 2711. Research Analysts and Research Reports

(a) Definitions

For purposes of this rule, the following terms shall be defined as provided.

(1) ''Investment banking department'' means any department or division, whether or not identified as such, that performs any investment banking service on behalf of a member.

(2) ''Investment banking services'' include, without limitation, acting as an

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45137 (December 6, 2001), 66 FR 64490.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Thomas M. Selman, Senior Vice President, Investment Companies, Corporate Financing, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission (March 7, 2002) (''Amendment No. 1''). In Amendment No. 1, NASDR revised its response to Items 1(b) and 1(c) of the Form 19b–4 to indicate the impact that proposed NASD Rule 2711 would have on NASD Rule 2210. Additionally, NASDR is inserting language in its Purpose section to clarify how the current disclosure requirements regarding securities recommendations in NASD Rule 2210 would apply if proposed NASD Rule 2711 is approved by the SEC. Finally, NASDR is revising the provisions requiring disclosure of actual material conflicts of interest to conform its provisions to those of the NYSE.

underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs or similar investments; or serving as placement agent for the issuer.

(3) ''Member of a research analyst's household'' means any individual whose principal residence is the same as the research analyst's principal residence.

(4) ''Public appearance'' means any participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public speaking activity in which a research analyst makes a recommendation or offers an opinion concerning an equity security.

(5) ''Research analyst'' means the associated person who is principally responsible for, and any associated person who reports directly or indirectly to such a research analyst in connection with, preparation of the substance of a research report, whether or not any such person has the job title of ''research analyst.''

(6) ''Research analyst account'' means any account in which a research analyst or member of the research analyst's household has a beneficial interest, or over which such analyst or household member has discretion or control, other than an investment company registered under the Investment Company Act of 1940.

(7) ''Research department'' means any department or division, whether or not identified as such, that is principally responsible for preparing the substance of a research report on behalf of a member.

(8) ''Research report'' means a written or electronic communication that the member has distributed or will distribute with reasonable regularity to its customers or the general public, which presents an opinion or recommendation concerning an equity security.

(9) ''Subject company'' means the company whose equity securities are the subject of a research report or recommendation in a public appearance.

(b) Restrictions on Investment Banking Department Relationship with Research Department

(1) No research analyst may be subject to the supervision or control of any employee of the member's investment banking department.

(2) Except as provided in paragraph (b)(3), no employee of the investment banking department may review or approve a research report of the member before its publication.

(3) Investment banking personnel may review a research report before its publication as necessary only to verify the factual accuracy of information in the research report or to review the research report for any potential conflict of interest, provided that:

(A) Any written communication between investment banking and research department personnel concerning such a research report must be made either through an authorized legal or compliance official of the member or in a transmission copied to such an official; and

(B) any oral communication between investment banking and research department personnel concerning such a research report must be documented and made either through an authorized legal or compliance official acting as intermediary or in a conversation conducted in the presence of such an official.

(c) Restrictions on Review of a Research Report by the Subject Company

(1) Except as provided in paragraphs (c)(2) and (c)(3), a member may not submit a research report to the subject company before its publication.

(2) A member may submit sections of such a research report to the subject company before its publication for review as necessary only to verify the factual accuracy of information in those sections, provided that:

(A) The sections of the research report submitted to the subject company do not contain the research summary, the research rating or the price target;

(B) a complete draft of the research report is provided to the legal or compliance department before sections of the report are submitted to the subject company; and

(C) if after submitting the sections of the research report to the subject company the research department intends to change the proposed rating or price target, it must first provide written justification to, and receive written authorization from, the legal or compliance department for the change. The member must retain copies of any draft and the final version of such a research report for three years following its publication.

(3) The member may notify a subject company that the member intends to change its rating of the subject company's securities, provided that the notification occurs on the business day before the member announces the rating change, after the close of trading in the principal market of the subject company's securities.

(d) Prohibition of Certain Forms of Research Analyst Compensation

No member may pay any bonus, salary or other form of compensation to a research analyst that is based upon a specific investment banking services transaction.

(e) Prohibition of Promise of Favorable Research

No member may directly or indirectly offer favorable research, a specific rating or a specific price target, or threaten to change research, a rating or a price target, to a company as consideration or inducement for the receipt of business or compensation.

(f) Imposition of Quiet Periods

No member may publish a research report regarding a subject company for which the member acted as manager or co-manager of:

(1) An initial public offering, for 40 calendar days following the date of the offering; or

(2) a secondary offering, for 10 calendar days following the date of the offering; provided that this provision will not prevent a member from publishing a research report concerning the effects of significant news or a significant event on the subject company within such 40- and 10-day periods, and provided further that the legal and compliance department authorizes publication of that research report before it is issued.

(g) Restrictions on Personal Trading by Research Analysts

(1) No research analyst account may purchase or receive any securities before the issuer's initial public offering if the issuer is principally engaged in the same types of business as companies that the research analyst follows.

(2) No research analyst account may purchase or sell any security issued by a company that the research analyst follows, or any option on or derivative of such security, for a period beginning 30 calendar days before and ending five calendar days after the publication of a research report concerning the company or a change in a rating or price target of the company's securities; provided that:

(A) A member may permit a research analyst account to sell all of the securities held by them that are issued by a company that the research analyst follows, within 30 calendar days after the research analyst began following the company for the member;

(B) a member may permit a research analyst account to purchase or sell any security issued by a subject company within 30 calendar days before the

publication of a research report or change in the rating or price target of the subject company's securities due to significant news or a significant event concerning the subject company, provided that the member's legal or compliance department pre-approves the research report and any change in the rating or price target.

(3) No research analyst account may purchase or sell any security or any option on or derivative of such security in a manner inconsistent with the research analyst's recommendation as reflected in the most recent research report published by the member.

(4) A member's legal or compliance department may authorize a transaction otherwise prohibited by paragraphs (g)(2) and (g)(3) based upon significant personal financial circumstances of the beneficial owner of the research analyst account, provided that:

(A) The legal or compliance department authorizes the transaction before it is entered;

(B) each exception is granted in compliance with policies and procedures adopted by the member that are reasonably designed to ensure that these transactions do not create a conflict of interest between the professional responsibilities and the personal trading activities of a research analyst; and

(C) the member maintains written records concerning each transaction and the justification for permitting the transaction for three years following the date on which the transaction is approved.

(5) The prohibitions in paragraphs (g)(1) through (g)(3) do not apply to a purchase or sale of the securities of:

(A) any registered diversified investment company as defined under Section (5)(b)(1) of the Investment Company Act of 1940; or

(B) any other investment fund over which neither the research analyst nor a member of the research analyst's household has any investment discretion or control, provided that:

(i) The research analyst accounts collectively own interests representing no more than 1% of the assets of the fund;

(ii) the fund invests no more than 20% of its assets in securities of issuers principally engaged in the same types of business as companies that the research analyst follows; and

(iii) the investment fund does not distribute securities in kind to the research analyst or household member before the issuer's initial public offering.

(h) Disclosure Requirements

(1) Ownership and Material Conflicts of Interest

A member must disclose in research reports and a research analyst must disclose in public appearances:

(A) If the research analyst or a member of the research analyst's household has a financial interest in the securities of the subject company, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position);

(B) if, as of five business days before the publication of the research report or the public appearance, the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company; and

(C) any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time of publication of the research report or at the time of the public appearance.

(2) Receipt of Compensation

(A) A member must disclose in research reports if:

(i) The research analyst principally responsible for preparation of the report received compensation that is based upon (among other factors) the member's investment banking revenues; and

(ii) the member or its affiliates received compensation from the subject company within twelve months before, or reasonably expects to receive compensation from the subject company within three months following, publication of the research report.

(B) A research analyst must disclose in public appearances if the analyst knows or has reason to know that the subject company is a client of the member or its affiliates.

(3) Position as Officer or Director

A member must disclose in research reports and a research analyst must disclose in public appearances if the research analyst or a member of the research analyst's household serves as an officer, director or advisory board member of the subject company.

(4) Meaning of Ratings

A member must define in its research reports the meaning of each rating used by the member in its rating system. The definition of each rating must be consistent with its plain meaning.

(5) Distribution of Ratings

(A) Regardless of the rating system that a member employs, a member must disclose in each research report the percentage of all securities rated by the member to which the member would assign a ''buy,'' ''hold/neutral,'' or ''sell'' rating.

(B) In each research report, the member must disclose the percentage of subject companies within each of these three categories for whom the member has provided investment banking services within the previous twelve months.

(C) The information that is disclosed under paragraphs (h)(5)(A) and (h)(5)(B) must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than 15 calendar days after the most recent calendar quarter).

(6) Price Chart

A member must present in any research report concerning an equity security on which the member has assigned any rating for at least one year, a line graph of the security's daily closing prices for the period that the member has assigned any rating or for a three-year period, whichever is shorter. The line graph must:

(A) Indicate the dates on which the member assigned or changed each rating or price target;

(B) Depict each rating and price target assigned or changed on those dates; and

(C) Be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than 15 calendar days after the most recent calendar quarter).

(7) Price Targets

A member must disclose in research reports the valuation methods used to determine a price target. Price targets must have a reasonable basis and must be accompanied by a disclosure concerning the risks that may impede achievement of the price target.

(8) Market Making

A member must disclose in research reports if it was making a market in the subject company's securities at the time that the research report was published.

(9) Disclosure Required by Other Provisions

In addition to the disclosure required by this rule, members and research analysts must provide disclosure in research reports and public appearances that is required by applicable law or regulation, including NASD Rule 2210 and the antifraud provisions of the federal securities laws.

(10) Prominence of Disclosure

The disclosures required by paragraph (h) must be presented on the front page of research reports or the front page must refer to the page on which disclosures are found. Disclosures and references to disclosures must be clear, comprehensive and prominent.

(i) Supervisory Procedures

Each member subject to this rule must adopt and implement written supervisory procedures reasonably designed to ensure that the member and its employees comply with the provisions of this rule, and a senior officer of such a member must attest annually to the Association that it has adopted and implemented those procedures.

B. NYSE Proposed Rule Text

Rule 472 Communications with the Public

Approval of Communications and Research Reports

(a)(1) Each advertisement, market letter, sales literature or other similar type of communication which is generally distributed or made available by a member or member organization to customers or the public [shall] *must* be approved in advance by a member, allied member, supervisory analyst, or *qualified* person designated under the provisions of Rule 342(b)(1).

(2) Research reports [shall] *must* be prepared or approved, in advance, by a supervisory analyst acceptable to the Exchange under the provisions of Rule 344. Where a supervisory analyst does not have technical expertise in a particular product area, the basic analysis contained in such report may be co-approved by a product specialist designated by the organization. In the event that the member organization has no principal or employee qualified with the Exchange to approve such material, it [shall] *must* be approved by a qualified supervisory analyst in another member organization by arrangement between the two member organizations.

Investment Banking, Research Department and Subject Company Relationships and Communications

(b)(1) Research Department personnel or any associated person(s) engaged in the preparation of research reports may not be subject to the supervision or control of the Investment Banking Department of the member or member organization. Research reports may not be subject to review or approval prior to distribution by the Investment Banking Department.

(2) Investment Banking personnel may check research reports prior to distribution only to verify the accuracy of information and to identify or to review for any potential conflicts of interest that may exist, provided that:

(i) *Any such written communication concerning the accuracy of research reports between the Investment Banking and Research Departments must be made either through the Legal or Compliance Department or in a transmission copied to Legal or Compliance; and*

(ii) *any such oral communication concerning the accuracy of research reports between the Investment Banking and Research Departments must be documented and made either with Legal or Compliance personnel acting as intermediary or in a conversation conducted in the presence of Legal or Compliance personnel.*

(3) The subject company may not review or approve research reports prior to distribution, except for the review of sections of a draft of the research report solely to verify facts. Members and member organizations may not, under any circumstances, provide the subject company sections of research reports that include the research summary, the research rating or the price target.

(i) Prior to submitting any sections of the research report to the subject company, the Research Department must provide a complete draft of the research report to the Legal or Compliance Department.

(ii) If after submission to the subject company, the Research Department intends to change the proposed rating or price target, the Research Department must provide written justification to, and receive prior written authorization from, the Legal or Compliance Department for any change. The Legal or Compliance Department must retain copies of any drafts and changes thereto of the research reports provided to the subject company.

(iii) The member or member organization may not notify a subject company that a rating will be changed until after the close of trading in the principal market of the subject company one business day prior to the announcement of the change.

Written Procedures

(c) Each member and member organization must establish written procedures reasonably designed to ensure that members, member organizations and their associated persons are in compliance with this Rule (see Rule 351(f) for attestations to the Exchange regarding compliance).

Retention of Communications

[(c)] (*d*) Communications with the public prepared or issued by a member or member organization [shall] *must* be retained in accordance with Rule 440 (''Books and Records''). The names of the persons who prepared and who reviewed and approved the material [shall] *must* be ascertainable from the retained records and the records retained [shall] *must* be readily available to the Exchange, upon request.

Restrictions on Trading Securities by Associated Persons

(e)(1) No associated person or member of the associated person's household may purchase or receive an issuer's securities prior to its initial public offering (e.g., so-called pre-IPO shares), if the issuer is principally engaged in the same types of business as companies (or in the same industry classification) which the associated person usually covers in research reports.

(2) No associated person or member of the associated person's household may trade in any recommended subject company's securities or derivatives of such securities for a period of thirty (30) calendar days prior to and five (5) calendar days after the member's or member organization's issuance of research reports concerning such security or a change in rating or price target of a subject company's securities.

(3) No associated person or member of the associated person's household may effect trades contrary to the member's or member organization's most current recommendations (i.e., sell securities while maintaining a ''buy'' or ''hold'' recommendation, buy securities while maintaining a ''sell'' recommendation, or effecting a ''short sale'' in a security while maintaining a ''buy'' or ''hold'' recommendation on such security).

(4) The following are exceptions to the prohibitions contained in paragraphs (1), (2), and (3):

(i) Transactions by associated persons and household members that have been pre-approved in writing by the Legal or Compliance Department that are made due to an unanticipated significant change in their personal financial circumstances;

(ii) a member or member organization may permit the issuance of research reports or permit a change to the rating or price target on a subject company, regardless of whether an associated person and/or household members traded the subject company's securities or derivatives of such securities, within the thirty (30) calendar day period

described in paragraph (e)(2), when the issuance of such research reports, or change in such rating or price target is attributable to some significant news or events regarding the subject company, provided that the issuance of such research reports, or change in rating or price target on such subject company has been pre-approved in writing by the Legal or Compliance Department;

(iii) sale transactions by an associated person and/or household member who is new to the member or member organization within thirty (30) calendar days of such associated person's employment with the member or member organization when such associated person and/or household member had previously purchased such security or derivatives of such security prior to the associated person's employment with the member or member organization;

(iv) sale transactions by an associated person and/or household member within thirty (30) calendar days from the date of the member's or member organization's issuance of research reports or changes to the rating or price target on a subject company when such associated person and/or household member had previously purchased the subject company's securities or derivatives of such securities prior to initiation of coverage of the subject company by the associated person;

(v) transactions in accounts not controlled by the associated person and for investment funds in which an associated person or household member participates as a passive investor, provided the interest of the associated person or household member in the assets of the fund does not exceed 1% of the fund's assets, and the fund does not invest more than 20% of its assets in securities of issuers principally engaged in the same types of business as companies (or in the same industry classification) which the associated person usually covers in research reports. If an investment fund distributes securities in kind to an associated person before the issuer's initial public offering, the associated person must either divest those securities immediately or refrain from participating in the preparation of research reports concerning that issuer.

(vi) transactions in a registered diversified investment company as defined under Section 5(b)(1) of the Investment Company Act of 1940.

Restrictions on Member's or Member Organization's Issuance of Research Reports

(f)(1) A member or member organization may not issue research reports regarding an issuer for which the member or member organization acted as manager or co-manager of an initial public offering within forty (40) calendar days following the effective date of the offering.

(2) A member or member organization may not issue research reports regarding an issuer for which the member or member organization acted as manager or co-manager of a secondary offering within ten (10) calendar days following the effective date of the offering.

(3) A member or member organization may permit exceptions to the prohibitions in paragraphs (f)(1) and (2) (consistent with other securities laws and rules) for research reports that are issued due to significant news or events, provided that such research reports are pre-approved in writing by the Legal or Compliance Department.

Prohibition of Offering Favorable Research for Business

(g) No member or member organization may directly or indirectly offer a favorable research rating or specific price target, or offer to change a rating or price target, to a subject company as consideration or inducement for the receipt of business or for compensation.

Restrictions on Compensation to Associated Persons

(h) No member or member organization may compensate an associated person(s) for specific investment banking services transactions. An associated person may not receive an incentive or bonus that is based on a specific investment banking services transaction. However, a member or member organization is not prohibited from compensating an associated person based upon such person's overall performance, including services provided to the Investment Banking Department (see Rule 472(k)(2) for disclosure of such compensation).

(i) [.30] General Standards for All Communications

No change

(j) [.40] Specific Standards for Communications

(1) Recommendations

A recommendation (even though not labeled as a recommendation) must have a basis which can be substantiated as reasonable.

When recommending the purchase, sale or switch of specific securities, supporting information must be provided or offered.

The market price at the time the recommendation is made must be indicated.

(2) [(3)] Records of Past Performance

No change

(3) [(4)] Projections and Predictions

No change

(4) [(5)] Comparisons

No change

(5) [(6)] Dating Reports

No change

(6) [(7)] Identification of Sources

No change

(7) [(8)] Testimonials

No change

(k) [(2)] Disclosure

[When a communication (excluding extemporaneous interviews in and with the media) recommends the purchase or sale of a specific security, member organizations must disclose the following information:

(i) if the organization usually makes a market in the security being recommended or if some or all of the recommended securities are to be sold to or bought from customers on a principal basis.

(ii) if the member organization was manager or co-manager of the most recent public offering (within 3 years) of any securities of the recommended issuer.

(iii) if the member organization or its employees involved in the preparation or the issuance of the communication may have positions in any securities or options of the recommended issuer.

(iv) if a member, allied member or employee is a director of a corporation whose security is being recommended.]

(k)(1) Disclosures Required in Research Reports and Scheduled Public Appearances Disclosure of Member's, Member Organization's and Associated Person's Ownership of Securities

(i) *A member or member organization must disclose in research reports and an associated person must disclose in public appearances:*

a. *if, as of five (5) business days before the publication or appearance, the member or member organization or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934,*

b. *if the associated person or a household member has a financial interest in the securities of the subject company, or*

c. *any other actual, material conflict of interest of the member or member organization, which the associated person knows, or has reason to know, at the time the research report is issued or at the time the public appearance is made.*

Member Organization Compensation

(ii) *A member or member organization must disclose in research reports if the member or member organization or its affiliates received compensation from the subject company within the twelve (12) months prior to the date of the research report. A member or member organization must also disclose if the member or member organization or its affiliates reasonably expects to receive compensation from the subject company within the three months following the date of issuance of the research report. When an associated person recommends securities in a public appearance, the associated person must disclose if the subject company is an investment banking services client of the member, member organization, or one of its affiliates, when the associated person knows or has reason to know of this relationship.*

Disclosure of Associated Person's Affiliations With Subject Company

(iii) *A member or member organization must disclose in research reports whether the associated person or member of the associated person's household is an officer, director or advisory board member of the recommended issuer.*

(k)(2) Disclosures Specific to Research Reports

The front page of a research report either must include the disclosures required under this Rule or must refer the reader to the page(s) on which each such disclosure is found. Disclosures, and references to disclosures, must be clear, comprehensive and prominent. A member or member organization must disclose in research reports if the associated person preparing such reports received compensation that is based upon (among other factors) the member's or member organization's overall investment banking revenues. A member or member organization must disclose in research reports that recommend securities:

(i) If it is making a market in the subject company's securities at the time the research report is issued.

(ii) the valuation methods used, and any price objectives must have a reasonable basis and include a discussion of risks.

(iii) the meanings of all ratings used by the member or member organization in its ratings system. (For example, a member or member organization might disclose that a ''strong buy'' rating means that the rated security's price is expected to appreciate at least 10% faster than other securities in its sector over the next 12-month period). Definitions of ratings terms also must be consistent with their plain meaning. Therefore, for example, a ''hold'' rating should not mean or imply that an investor should sell a security.

(iv) the percentage of all securities that the member or member organization recommends an investor ''buy,'' ''hold,'' or ''sell''. Within each of the three categories, a member or member organization must also disclose the percentage of subject companies that are investment banking services clients of the member or member organization within the previous twelve (12) months. (See Rule 472.70 for further information.)

(v) a chart that depicts the price of the subject company's stock over time and indicates points at which a member or member organization assigned or changed a rating or price target. This provision would apply only to securities that have been assigned a rating for at least one year, and need not extend more than three years prior to the date of the research report. The information in the price chart must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter).

[Supplementary Material * * *]

.10 Definitions

(1) Communication—The term ''Communication'' is deemed to include, but is not limited to, advertisements, market letters, research reports, sales literature, electronic communications, communications in and with the press and wires and memoranda to branch offices or correspondent firms which are shown or distributed to customers or the public.

(2) Research Report—''Research reports''are generally defined as*, but are not limited to*, an analysis of *equity securities of* individual companies[,] or industries, [market conditions, securities or other investment vehicles] which provide information reasonably sufficient upon which to base an investment decision *and include a recommendation. For purposes of Rule 472(a)(2), research reports include, but are not limited to, reports which recommend equity securities, derivatives of such securities, including options, debt and other types of fixed income securities, single stock futures products, and other investment vehicles subject to market risk.*

(3) *Advertisement—''Advertisement'' is defined to include, but is not limited to, any sales communications that is published, or designed for use in any print, electronic or other public media such as newspapers, periodicals, magazines, radio, television, telephone recording, web sites, motion pictures, audio or video device, telecommunications device, billboards or signs.*

(4) *Market letters—''Market letters'' are defined as, but are not limited to, any written comments on market conditions, individual securities, or other investment vehicles. They also include ''follow-ups'' to research reports and articles prepared by members or member organizations which appear in newspapers and periodicals*

(5) *Sales literature—''Sales literature'' is defined as, but is not limited to, written or electronic communications including, but not limited to, telemarketing scripts, performance reports or summaries, form letters, seminar texts, and press releases discussing or promoting the products, services and facilities offered by a member or member organization, the role of investment in an individual's overall financial plan, or other material calling attention to any other communication.*

[.20 Other Communications Activities

Other communications activities are deemed to include, but not be limited to, conducting interviews with the media, writing books, conducting seminars or lecture courses, writing newspaper or magazine articles and making radio/TV appearances.

Member organizations must establish specific written supervisory procedures applicable to members, allied members and employees who engage in these types of communications activities. These procedures must include provisions which require prior approval of such activity by a person designated under the provisions of Rule 342(b)(1). These types of activities are subject to the general standards set forth in .30. In addition, any activity which includes discussion of specific securities is subject to the specific standards in .40.]

.20 For purposes of this Rule, ''investment banking services'' includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transaction), or similar investments; or serving as placement agent for the issuer.

.30 For purposes of this Rule, the term ''Investment Banking Department'' means any department or division of the member or member organization, whether or not identified as such, that

performs any investment banking services on behalf of the member or member organization.

.40 For purposes of this Rule, the term ''associated person'' includes a member, allied member, or employee of a member or member organization responsible for, and any person who reports directly or indirectly to such associated person in connection with the making of the recommendation to purchase, sell or hold an equity security in research reports, or public appearances or establish a rating or price target of a subject company's equity securities. For purposes of this Rule, the term ''household member'' means any individual whose principal residence is the same as the associated person's principal residence. Paragraphs (e)(1), (2), (3); (4)(i), (ii), (iii), (iv) and (v); (k)(1)(i)(B), (k)(1)(iii) apply to any account in which an associated person has a financial interest, or over which the associated person exercises discretion or control.

.50 For purposes of this Rule, the term ''public appearance'' includes, without limitation, participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or public speaking activity.

.60 For purposes of this Rule, ''subject company'' is the company whose equity securities are the subject of research reports.

.70 For purposes of Rule 472(k)(2)(iv), a member or member organization must determine, based on its own ratings system, into which of the three categories each of their securities ratings utilized falls. This information must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter). For example, a research report might disclose that the member or member organization has assigned a ''buy'' rating to 58% of the securities that it follows , a ''hold'' rating to 15%, and a ''sell'' rating to 27%.

Rule 472(k)(2)(iv) requires members or member organizations to disclose the percentage of companies that are investment banking services clients for each of the three ratings categories within the previous twelve (12) months. For example, if 20 of the 25 companies to which a member or member organization has assigned a ''buy'' rating are investment banking clients of the member or member organization, the member or member organization would have to disclose that 80% of the companies that received a ''buy'' rating are its investment banking clients. Such disclosure must be made for the ''buy'', ''hold'' and ''sell'' ratings categories as appropriate.

.80 For purposes of this Rule, the term ''Legal or Compliance Department'' also includes, but is not limited to, any department of the member or member organization which performs a similar function.

.90 For purposes of Rule 472(a), a qualified person is one who has passed an examination acceptable to the Exchange.

.100 For purposes of this Rule, the term ''initial public offering'' refers to the initial registered equity security offering by an issuer, regardless of whether such issuer is subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, prior to the time of the filing of such issuer's registration statement.

.110 For purposes of this Rule, a secondary offering shall include a registered follow-on offering by an issuer or a registered offering by persons other than the issuer involving the distribution of securities subject to Regulation M of the Securities Exchange Act of 1934.

Rule 351 Reporting Requirements

(a)–(e) No change

(f) *Each member and member organization that prepares, issues or distributes communications to the public, (including but not limited to, research reports, media presentations and interviews), is required to submit to the Exchange annually, a letter of attestation signed by a senior officer or partner that the member or member organization has established and implemented procedures reasonably designed to comply with the provisions of Rule 472.*

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.11 For purposes of Rule 351(f), the attestation must be submitted by April 1 of each year.

.12 The term ''research reports'' is defined in Rule 472.10.

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, NASDR and the NYSE included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. NASDR and the NYSE have prepared summaries, set forth in Sections A, B, and C below.

A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. NASD's Purpose

According to NASDR, it has worked closely with the NYSE to develop rules to address conflicts of interest that can arise when research analysts recommend equity securities in research reports and public appearances. NASD's proposed rule change is intended to improve the objectivity of research and provide investors with more useful and reliable information when making investment decisions.

To that end, the NASD's proposed rule change generally would minimize the influence that a member's investment banking department has over its research department and would restrict analysts' personal trading of securities. The NASD's proposed rule change also would require disclosure of financial interests held by the member firm, the analyst and his or her family members, and any other material conflict of interest associated with a recommendation of a security. The NASD's proposed rule change also would require firms to clarify the meanings of their research ratings and provide historical price and ratings distribution data in research reports to better enable investors to evaluate and compare the quality of research.

A more detailed discussion of the proposed rule's provisions follows.

a. Definitions

The terms ''research analyst'' and ''research report'' are used frequently throughout the NASD's proposed rule change. ''Research analyst'' would be defined to mean an ''associated person who is principally responsible for, and any associated person who reports directly or indirectly to such a research analyst in connection with preparation of the substance of a research report, whether or not any such person has the job title of 'research analyst.' '' ''Research report'' would be defined to mean ''a written or electronic communication that the member has distributed or will distribute with reasonable regularity to its customers or the general public, which presents an opinion or recommendation concerning an equity security.''

Accordingly, the term ''research analyst'' would not include every associated person who may express an opinion on an equity security. Thus, for example, most mutual fund portfolio managers are not principally responsible for the preparation of ''research reports'' as defined by the

NASD's proposed rule change. Consequently, a mutual fund portfolio manager generally would not be deemed to be a ''research analyst,'' even if the portfolio manager is an associated person of a member firm and discusses the mutual fund's portfolio holdings in a television interview.

The NASD specifically requests comments on these definitions. Would the definition of ''research analyst'' have any regulatory gaps? Would it impose any unnecessary burdens on members, particularly by including any associated person who reports to a research analyst? Would the definition of ''research report'' properly exclude those communications that do not present the types of concerns that the proposed rule change is designed to address?

The NASD's proposed rule change would require research analysts to make various types of disclosures in their public appearances. The term ''public appearance'' would be defined to include any participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public speaking activity in which a research analyst makes a recommendation or offers an opinion concerning an equity security. Consequently, this term also would include any public conference call in which a research analyst expresses an opinion on an equity security. The NASD's proposed rule change would require only that a research analyst make these disclosures. An independent decision by the sponsor of the public appearance, such as a television program sponsor, to edit out the required disclosures, would not constitute a violation of the NASD's proposed rule. NASD requests comment on whether the scope of this definition is adequate to address the concerns raised by a research analyst's public speaking activities and whether it might impose any unnecessary burdens on members or their research analysts.

The term ''member of a research analyst's household'' is used in connection with the proposed rule change's personal trading restrictions and disclosure requirements. NASD proposes to define this term to include any individual whose principal residence is the same as the research analyst's residence. Thus, it would include any family member living with the research analyst, as well as any other individual living in the same principal residence. NASD requests comment on whether this definition is appropriate.

The term ''research analyst account'' is used in connection with the NASD's proposed rule change's personal trading restrictions. The NASD proposes to define this term to include any account in which a research analyst or a member of the research analyst's household has a beneficial interest, or over which such analyst or household member has discretion or control. The term would not include an investment company registered under the Investment Company Act of 1940 that is managed by a research analyst or a member of the analyst's household.

b. Investment Banking Department Relationship With Research Department

NASD believes that a potential conflict exists between a firm's responsibility to provide fair, objective and unbiased research and its interest in obtaining or retaining investment banking business from a company that is the subject of a research report (''subject company''). The NASD proposes to adopt several measures to address this potential conflict.

(1) Supervision and Control of Research Department

The NASD's proposed rule change would prohibit a member's investment banking department from supervising or controlling the member's research department and from reviewing or approving research reports before their publication. ''Investment banking department'' is proposed to be defined to include any department or division, whether or not identified as such, that performs any investment banking service on behalf of the member. ''Investment banking services'' is proposed to encompass a broad array of services typically offered to investment banking clients, including acting as an underwriter in an offering for the issuer, acting as a financial advisor in a merger or acquisition, providing venture capital, equity lines of credit, PIPES or similar investments, or serving as placement agent for the issuer. NASD requests comment on whether this definition of ''investment banking services'' is appropriate or inclusive enough in light of the purposes of the proposed rule change.

The NASD believes that this provision would better ensure that research is shielded from the influence of the investment banking department's relationship with the subject company. Under the NASD's proposed rule change, investment banking personnel could communicate with research personnel concerning a research report before the report's publication only to ensure the report's factual accuracy and to screen for conflicts of interest. The NASD's proposed rule change would require an authorized legal or compliance official to act as intermediary for all such communications. The term ''legal or compliance department'' as used in the proposed rule change would include any department or division that is principally responsible for compliance with applicable securities laws, regardless of whether the department or division is named ''legal'' or ''compliance.'' The NASD's proposed rule change would not restrict or impose conditions on any communication between a research department and an investment banking department that does not concern a proposed research report.

The NASD's proposed rule change also would address the concern that the subject company may attempt to influence the conclusions provided in a research report. The NASD's proposed rule change would prohibit a member from submitting a research report to the subject company for approval. The NASD's proposed rule change would allow the subject company to review only certain sections of a research report before its publication to ensure that it is factually accurate. However, a member could not submit in advance to the subject company those sections of the report that contain the research summary, the rating or the price target. The NASD's proposed rule change would require that if a research analyst intends to make changes to the proposed rating or price target after review by the subject company, the research analyst would first have to receive written approval from the member's legal and compliance department.

The NASD requests comment on the ''gate-keeping'' functions that the proposed rule change would impose on the legal or compliance department. The NASD recognizes that these responsibilities may require members to hire additional legal or compliance staff and to dedicate resources to these gate-keeping functions. Nevertheless, the possibility that investment banking departments exert undue influence over the contents of a research report has necessitated the proposed gate-keeping provisions. NASD requests comment on whether these provisions adequately address these concerns about undue influence and whether any alternative provisions would be equally effective. In addition, NASD requests comment on whether the gate-keeper approach that the proposed rule change would impose with respect to contact with the subject company also should apply to contacts with the investment banking department?

(2) Research Analyst's or Member's Investment Banking Compensation

The NASD's proposed rule change would prohibit a member from tying analyst compensation to specific investment banking transactions. The NASD requests comment on whether this provision might impose unnecessary burdens on smaller members that may have the same employee perform investment banking and research services. To the extent that this provision might impose such unnecessary burdens, the NASD requests comment on how widespread this problem would be? Further, NASD requests comment on what, if any, alternative measure would respond to the concerns that this provision is intended to address without imposing these burdens?

Since research analysts, as part of their job responsibilities, advise investment banking departments concerning such matters as whether a potential underwriting client is financially or operationally prepared for an initial public offering, the NASD's proposed rule change would permit a member to compensate its research analysts based on their overall performance, which may include these services to the investment banking department. However, a member would have to disclose in research reports if a research analyst received compensation based in whole or in part on the member's investment banking revenues.

The NASD's proposed rule change also would require a member to disclose in research reports if the member or its affiliates received compensation from the subject company within the last 12 months, or expected to receive compensation within the next three months following publication of the report. This disclosure requirement, like all of the other disclosure requirements of the proposed rule change, would mandate definitive disclosure. Ambiguous or conditional language, such as disclosure that the member ''may have'' received compensation from the subject company, would not comply with the disclosure requirements of the proposed rule change.

The NASD recognizes the possibility that this requirement might necessitate disclosure of compensation related to non-public transactions. The NASD believes that this type of compensation presents the same conflicts as the receipt of compensation related to transactions that have been publicly disclosed. Moreover, the NASD does not believe that the proposed rule change would alert the research department or the investing public concerning non-public transactions, for at least two reasons. First, the proposed rule change would require only disclosure that compensation was received by the member or one of its affiliates. It would not require disclosure concerning the nature of the transaction, such as the fact that the member received the compensation in connection with non-public merger and acquisition services, or even that the compensation was received by the member (as opposed to one of its affiliates that is not engaged in investment banking). Second, the term ''compensation'' is to be broadly interpreted to include the receipt of any consideration from the subject company. Given the breadth of the meaning of ''compensation,'' the NASD believes that this disclosure requirement should not alert the research department whether the compensation related to a non-public transaction. Nevertheless, the NASD does request comment on the efficacy of this disclosure requirement, and whether any alternative, definitive disclosure would be effective.

The NASD proposes that a research analyst would have to disclose in public appearances if the issuer of a recommended security is a client of the member or its affiliates, provided the analyst knows or has reason to know this fact. For purposes of this provision, the NASD proposes that an issuer would be deemed a ''client'' of the member if the member or its affiliates received compensation from the issuer within the previous twelve months, or reasonably expects to receive compensation from the issuer within the next three months. This disclosure requirement thus would not apply with regard to a non-public transaction in which the issuer is a client of the member or its affiliates and the research analyst does not know and has no reason to know of this fact due to an information barrier imposed by the member.

c. Promises of Favorable Research

The proposed rule change would include a provision that expressly prohibits a member from offering or threatening to change favorable research, a specific research rating or a specific price target as consideration or inducement for the receipt of business or compensation. According to the NASD, such behavior already constitutes a violation of just and equitable principles of trade (NASD Rule 2110) and could violate the anti-fraud provisions of the federal securities laws. The proposed rule change would make this prohibition explicit. A member would violate this provision simply by making such an offer or threat, whether or not the member provided any service to or received any compensation or business from the issuer.

d. Quiet Periods

The NASD's proposed rule change would impose two ''quiet periods'' on the issuance of research reports. The proposed rule change would prohibit a member from issuing a research report regarding a subject company for which the member acted as an underwriting manager or co-manager for 40 days following the date of an initial public offering and 10 days following the date of a secondary offering. For purposes of this provision, the ''date'' of an IPO is proposed to be the date on which the IPO's registration statement becomes effective. The ''date'' of a secondary offering is proposed to be the date on which a member commences sales on behalf of an issuer or selling security holders pursuant to an underwriting agreement or similar agreement that governs the transaction.

According to the NASD, the quiet periods are intended to reduce a manager's ability to improperly reward the subject company for its underwriting business by publishing favorable research after completion of the offering. The NASD's proposed rule change would not prohibit a manager or co-manager from issuing a research report during these quiet periods due to significant news or a significant event concerning the subject company. In general, NASD proposes that a ''significant'' news item or event would constitute a news item or event that is expected to have a material impact on, or that reflects a material change to, the subject company's earnings, operations or financial condition.

The NASD specifically seeks comment on the proposed quiet period after secondary offerings. In addition, the NASD seeks comment on the following: (1) How significant is a manager's opportunity to engage in this behavior with respect to a public company that conducts a secondary offering?; (2) Should the NASD adopt an exception to this provision for seasoned companies qualified to issue their securities in an initial public offering under Form S–3?; (3) Would the $75 million public float and one-year reporting requirements applicable to S–3 companies provide a sufficiently high threshold to ensure that the quiet period for secondary offerings is effective?; (4) Would an alternative standard, such as the $150 million public float value for actively traded securities under Regulation M, be more appropriate?

NASD also requests comment on whether the proposed quiet periods should apply not only to the issuance of research reports, but also to any public appearance by a research analyst employed by the manager or co-manager of the underwriting.

e. Research Analysts' Personal Trading

The NASD's proposed rule change would impose certain restrictions on an analyst's personal trading activities to help ensure that research reports and recommendations are not influenced by the prospect of personal enrichment and to ensure that analysts do not profit from the issuance of a research report or change in a rating or price target. The NASD's proposed rule change would prohibit a research analyst account (which would include any account of the research analyst or member of the analyst's household, and any account over which the analyst or household member has discretion or control) from purchasing or receiving securities of a company in the industry the analyst covers before that company's initial public offering. According to the NASD, this provision is designed to prevent a research analyst from receiving ''cheap stock'' before the initial public offering of a company that the analyst may subsequently cover.

The NASD's proposed rule change also would prohibit a research analyst account from trading a subject company's securities during a ''blackout'' period beginning 30 calendar days before, and ending five calendar days after, the issuance of a research report or change in the research rating or price target for the subject company's securities. This prohibition would apply not only to transactions in the subject company's securities themselves (including short sales), but also any derivative security, such as an option, right, warrant or future. Furthermore, the NASD's proposed rule change would prohibit a research analyst account from trading in a manner inconsistent with the analyst's most current recommendation concerning a security. Thus, for example, the proposed rule change would prohibit a research analyst from selling or effecting a short sale in a security while maintaining a ''buy,'' ''hold'' or ''neutral'' recommendation.

The NASD's proposed rule change would permit members to adopt certain exceptions to these prohibitions that are reasonable in light of the purposes of the personal trading restrictions. For example, the proposed rule change would permit a transaction within 30 calendar days before the member publishes a research report or changes a rating or price target due to significant news or a significant event concerning the subject company. This exception is designed to ensure that the 30-day blackout provision does not impede the member's ability to publish a research report or change a rating or price target in these circumstances. The exception would require that the member's legal or compliance department pre-approve any research report or change in a rating or price target made in connection with a significant news item or event. The legal or compliance department should consider, among other factors, whether the research analyst knew or had reason to know of the significant news or event before the research analyst account entered into the transaction that occurred less than 30 days prior to the new research report, rating or price target.

The NASD's proposed rule change would permit members to authorize an exception to the blackout period and prohibition of trading against recommendations to allow a research analyst account to trade securities due to significant personal financial circumstances, provided certain conditions are met. Reliance on this provision should be rare. In most cases, a research analyst account should not hold such a significant interest in a subject company's securities as to necessitate reliance on this provision. Moreover, this provision is meant to be narrowly construed to permit an exception in extremely limited circumstances such as when the beneficial owner of a research analyst account must liquidate securities holdings in order to have funds available for an unforeseen medical emergency.

According to the NASD, the restrictions on personal trading would not apply to transactions in shares of registered diversified investment companies as defined under Section 5(b)(1) of the Investment Company Act of 1940, even if the diversified investment company held shares of a subject company.[4] NASD also proposes that the restrictions would not apply to transactions in holdings of any other investment fund (including a non-diversified investment company) over which neither the research analyst nor a household member has any investment discretion or control, provided that the fund meets certain conditions. First, the research analyst account could not own more than one percent of the fund's assets. Second, the fund could not invest more than 20 percent of its assets in securities of issuers principally engaged in the same types of business as companies that the research analyst covers. Third, the fund could not distribute securities in kind to the research analyst or household member before the issuer's initial public offering. The NASD requests comment on whether this investment fund exception would create a regulatory gap that could undermine the effectiveness of the personal trading restrictions or, would it impose any unnecessary restrictions on a research analyst's ability to invest appropriately in certain investment funds?

f. Members' or Research Analysts' Financial Interests

The NASD's proposed rule change would impose several disclosure requirements on members and research analysts concerning their financial interest in a subject company's securities. First, the NASD's proposed rule change would require members and research analysts to disclose in research reports and public appearances if the research analyst (or a member of the research analyst's household) has a financial interest in a subject company, and the nature of the financial interest. According to the NASD, this ''financial interest'' could include any option, right, warrant, future, long or short position in the subject company's securities. The NASD requests comment on whether members and research analysts also should be required to disclose if any discretionary account managed by the research analyst or a member of the analyst's household (other than a registered investment company) has a financial interest in a subject company, and the nature of this interest.

Second, the NASD's proposed rule change would require members and analysts to disclose if the member or its affiliates beneficially own 1% or more of any class of a subject company's common equity securities. Members could determine whether they or their affiliates ''beneficially own'' a security by relying upon the standards set forth

[4] According to the NASD, under Section 5(b)(1) of the Investment Company Act of 1940, a ''diversified'' investment company's assets are divided into two baskets, one representing 75% of its assets and one representing 25% of its assets. The restrictions focus on the 75% basket: its assets must consist of cash, government securities, securities of other investment companies, and ''other securities.'' The ''other securities'' of a single issuer may not account for more than 5% of the fund's assets, and the fund may not hold more than 10% of a single issuer's voting securities. The 25% basket is not subject to these restrictions. 15 U.S.C. 80a–5 (b)(1).

in Section 13(d)[5] and section 13(g)[6] of the Act, and the rules thereunder.

Finally, the NASD's proposed rule change contains a provision that would require disclosure in research reports and public appearances of any other actual, material conflict of interest of which the analyst knows or has reason to know. The NASD requests comment on this provision. Specifically, the NASD solicits comment on what types of guidance would members need in order to know when this disclosure is necessary? The NASD's proposed rule change would explicitly require that members and their research analysts comply with the disclosure requirements of other applicable laws and regulations, including NASD Rule 2210 and the anti-fraud provisions of the federal securities laws. In light of this explicit requirement, the NASD requests comment on whether the general admonishment to disclose ''other, actual material conflicts of interest'' is necessary.

g. Other Disclosures

The NASD's proposed rule change would require additional disclosures in research reports to clarify the meaning of a member's ratings system and provide investors with better information to evaluate and compare the quality of a firm's research and the influence of possible conflicts on the assignment of ratings.

First, the NASD's proposed rule change would require that research reports disclose the meaning of all ratings used in the member's rating system. The NASD's proposed rule change also would require that the definition of each rating be consistent with its plain meaning. For example, a ''hold'' rating could not mean that an investor should sell the security.

Second, the NASD's proposed rule change would require a member to disclose in its research reports the percentage of all securities rated by the member to which the member would assign a ''buy,'' ''hold/neutral'' or ''sell'' rating, regardless of whether the member's rating system uses other categories. The NASD's proposed rule change would require a member to determine based on its own rating system into which of the three categories each securities rating falls. Thus, for example, a rating of ''market outperform'' or ''strong buy'' might constitute a ''buy'' under this requirement. The member then would provide the percentage of all of its ratings in each of these categories. For example, a research report might disclose that the member has assigned a ''buy'' rating to 70% of the securities that it follows, a ''hold'' rating to 25%, and a ''sell'' rating to 5% (even if the member employs a system that assigns five different ratings to the securities that it follows). NASD requests comment on whether another set of terms would be more appropriate than ''buy,'' ''hold/neutral'' or ''sell,'' such as a numerical rating system of ''one,'' ''two'' and ''three.''

Third, the NASD proposes that the member would have to disclose the percentage of subject companies within each of these three rating categories for which the member has provided investment banking services within the previous twelve months. For example, if 20 of the 25 companies that a member categorizes with a ''buy'' rating are investment banking clients , the member would have to disclose that 80 percent of the companies in the ''buy'' rating category are its investment banking clients. NASD proposes that all of this information would have to be current as of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than 15 calendar days after the most recent calendar quarter).

Fourth, the NASD's proposed rule change would require that research reports present a price chart that maps the historical price movements of the recommended security and indicates those points at which the member assigned or changed a research rating or price target. The NASD believes that such a chart could enable investors to compare the ratings and price targets that a member has assigned with the stock performance of the recommended security.[7]

The NASD proposes that this disclosure requirement would apply only to securities on which the member has assigned a rating for at least one year, in recognition of the long-term nature of many ratings. The NASD proposes that the provision also would require that the price chart cover the period that the member has rated the security or three years, whichever is shorter. The NASD proposes that the price chart would have to be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than 15 calendar days after the most recent calendar quarter).

Fifth, the NASD's proposed rule change would require disclosure in research reports of the valuation methods used in developing the research rating price target. The price target must have a reasonable basis and must be accompanied by a disclosure concerning the risks that may impede achievement of the price target. The requirement that the price target have a reasonable basis is based upon the current requirement in NASD Rule 2210(d)(2)(B)(i) that any member securities recommendation in an advertisement or item of sales literature have a reasonable basis.

Sixth, the NASD's proposed rule change would require the member to disclose if it makes a market in the subject company's securities. According to the NASD, the market-making provisions are similar to requirements that exist under NASD Rule 2210. Ambiguous or conditional language, such as the fact that a member ''may'' make a market, or ''usually'' makes a market in the security, would not comply with this disclosure requirement.[8]

Seventh, the NASD proposed rule change would require disclosure in research reports and public appearances of whether a research analyst or a member of the research analyst's household is an officer, director or advisory board member of the subject company. The NASD requests comment as to whether this disclosure requirement should extend to *any* employment with the subject company, including recent past employment.

Finally, in addition to the disclosure required by this proposed rule change, members and research analysts would be required to provide disclosure in research reports and public appearances that is required by applicable law or regulation, including NASD Rule 2210 and the anti-fraud provisions of the federal securities laws. In particular, NASD Rule 2210(d)(2)(B)(i) provides that, in making a recommendation in advertisements and sales literature, a member must disclose, as applicable:

- That the member usually makes a market in the recommended security, or that the member or associated persons will sell to or buy from customers on a principal basis;
- That the member and/or its officers or partners own options, rights or warrants to purchase any of the securities of the recommended issuer,

[5] 15 U.S.C. 78m(d).

[6] 15 U.S.C. 78m(g).

[7] The NASD submitted a sample price chart that complies with this proposed rule provision as Exhibit 3 to its Form 19b–4, which is part of the public file and can be inspected at the Commission's Public Reference Room, as well as at the principal office of the NASD.

[8] To the extent that there are differences in the disclosure requirements regarding market making between the proposed rule change and current NASD Rule 2210, the proposed rule change provisions would govern.

unless the extent of such ownership is nominal; and

• That the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last three years.

To the extent that the proposed rule change's disclosure requirements regarding market-making activities differ from those in Rule 2210(d)(2)(B)(i), the proposed rule change provisions would govern. However, the other disclosure requirements of Rule 2210(d)(2)(B)(i) would continue to apply to advertisements and sales literature (including research reports) in addition to the proposed rule change's disclosure requirements. Thus, a member would continue to be required to disclose in research reports if the member buys the recommended securities from, or sells them to, customers on a principal basis; if the member or its officers or partners own options, rights or warrants to purchase any securities of the recommended issuer in any amount (unless the extent of such ownership is nominal); and if the member was a manager or co-manager of a public offering of the recommended issuer's securities within the last three years.

The NASD proposes that disclosures required by the proposed rule change either would have to be presented on the front page of a research report, or the report's front page would have to refer to the page on which the disclosures are found. The NASD's proposed rule change would require disclosures to be clear, comprehensive and prominent. Ambiguous or conditional disclosures would not meet this standard.

h. Supervisory Procedures/Reporting Requirements

The NASD's proposed rule change would require each member that is subject to the proposed rule to adopt written supervisory procedures reasonably designed to ensure that the member and its employees comply with the rule. The NASD also proposes that a member's senior officer also would have to attest annually to the NASD that the member has established and implemented procedures reasonably designed to comply with the rule. The NASD believes that this provision is similar to NYSE Rule 351, which requires NYSE members to submit to the NYSE annually a letter signed by a senior officer of a member that the member has met certain supervisory requirements. The NASD requests comment on whether attestation to the NASD is necessary, or whether this provision should simply require members to maintain records of such annual attestations. The NASD also requests comment as to whether this attestation should be submitted only to a member's designated examining authority (generally the NYSE or the NASD).

2. NASD's Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) [9] of the Act, which require, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that this proposed rule change will eliminate or expose conflicts of interest and thereby significantly curtail the potential for fraudulent and manipulative acts. The NASD further believes that the proposed rule change will provide investors with better and more reliable information with which to make investment decisions.

3. NYSE's Purpose

According to the NYSE, its Rule 472 establishes standards governing member and member organization communications with the public. In particular, NYSE Rule 472.40(2) requires disclosure by member organizations as to certain relationships with recommended issuers, *e.g.,* if the member organization participates in a public offering, makes a market or has positions in the securities of a company that is recommended in a communication to the public.

a. Background

According to the NYSE, during 2000 and 2001, the stock market decline and negative news reports brought attention to the issue of research analysts' conflicts of interest as well as to the adequacy of disclosure in communications with the public that recommend securities. According to the NYSE, the SEC expressed particular concern about analysts and others who make stock recommendations during TV interviews and had additional concerns about written communications in which disclosures were vague and buried in hedge clauses or footnotes.

According to the NYSE, in 2000, the NYSE and NASDR began working on proposed amendments to NYSE and NASDR rules governing communications with the public (NYSE Rule 472 and NASDR Rule 2210) to strengthen the disclosure requirements.

In June 2001, the Securities Industry Association's (''SIA'') Ad Hoc Committee on Analyst Integrity issued new guidelines for research analysts entitled ''Best Practices for Research.'' These best practices, which do not have the effect of rules of the SEC or SROs, suggested prohibitions on linking analysts' compensation to investment banking deals; on analysts' trading against their own securities recommendations; and on approving research by investment banking departments and subject companies. The guidelines also recommended disclosure of ownership positions in securities of companies that research analysts cover.

In July 2001, the Association for Investment Management and Research (''AIMR'') published for comment an issues paper, ''Preserving the Integrity of Research,'' in which it identified conflicts of interest and pressures on research analysts that may bias research and recommendations.

In addition, during the second half of 2001, several broker-dealers announced that they would either prohibit analysts from owning shares in companies they cover or require their analysts to disclose ownership stakes in such companies.

During June and July 2001, the House Committee on Financial Service's Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises (the ''Subcommittee'') held hearings on the sources and ramifications of analysts'' conflicts of interest and on the adequacy of disclosures in communications to the public.

During these hearings, according to the NYSE, the following industry issues were addressed: [10] research analysts were ''subject to several influences that may affect the integrity and the quality of their analysis and recommendations;'' analysts provide assistance to investment banking by ''initiating research coverage on prospective investment banking clients;'' ''many firms pay their analysts largely based upon the profitability of their investment banking unit;'' ''investment bankers at some firms are involved in evaluating the firm's research analysts to determine their compensation;'' and several ''firms reported that investment banking had input into research analysts' bonuses.''

Further, according to the NYSE, it was found that ''analysts were invited to invest'' in ''companies' private

[9] 15 U.S.C. 78o–3(b)(6).

[10] July 31, 2001 testimony given by then SEC Acting Chairman Laura Unger, before the Subcommittee.

placements, which were not available to the public generally,'' and ''if the company went public and the analyst's firm underwrote the IPO, the analyst always issued positive research on the company.'' Also, ''firms did not always know whether their research analysts owned stock in companies they underwrote and upon which their analysts then issued research reports.''

Additionally, ''analysts sometimes provided investment bankers with prior notice of changes in recommendation,'' and in some instances, ''analysts provided investment bankers and client management with advance notice of a pending change in the analyst's recommendations.''

According to the NYSE, it was also found that some research analysts issued ''booster-shot'' research reports, whereby they reiterated ''buy recommendations shortly before, or just after, the lock-up period expired.'' Further, it was noted that some analysts ''executed trades for their personal accounts that were contrary to their recommendations in their research reports.'' In some instances, ''analysts'' ownership in stock of the covered company was not disclosed in the research report at all.''

In addition, according to the NYSE, it was found that ''sell-side analysts routinely recommend securities during public appearances in the media (such as on financial television and radio programs), but rarely reveal any conflicts of interest to investors.'' Finally, ratings categories used by firms in their research reports ''may be unclear to investors'' and that ''full-service broker-dealers use a variety of undefined terms to describe their investment recommendations,'' and that ''the wide variety of terms may confuse investors.''

The report of these hearings deemed the SIA best practices to be inadequate as a means of eliminating and/or mitigating the systemic conflicts of interest confronting analysts and the biased research attributable to such conflicts. According to NYSE, the Subcommittee concluded that rulemaking would be a more effective way to deal with these issues.

In November 2001, the NYSE and NASDR established a joint SRO/industry committee to elicit industry comment on the proposal on communications with the public developed to address Congress' concerns. The proposal also incorporates as rules many of the SIA best practices, and recommendations from the AIMR issues paper.

b. Proposed Amendments to NYSE Rule 472

As proposed, the NYSE Rule amendments will address and remediate the issues discussed above in regard to analysts' conflicts of interest and lack of adequate disclosure.

NYSE's proposed rules are intended to reinforce the integrity of the process and help rebuild investors' faith in research and in the equities markets as a whole. The amendments should impact the way research analysts work within their firms and with subject companies. As an unavoidable consequence, NYSE believes that this will add to the firms' costs and administrative burden of operating and overseeing the research process.

The most significant changes are as follows:

(1) Proposed amendments to NYSE Rule 472 would place the following prohibitions and/or restrictions on Investment Banking Department, Research Department and Subject Company Relationships and Communications:

- Research Department personnel or others engaged in the preparation of research reports may not be subject to the supervision or control of the Investment Banking Department (Proposed NYSE Rule 472(b)(1)).
- Research reports may not be subject to review or approval prior to distribution by the Investment Banking Department (Proposed NYSE Rule 472(b)(1)).
- The NYSE believes that analyst's responsibility to provide fair, objective and unbiased research may be compromised if, at the same time, the analyst is involved with and/or supervised by the member or member organization's Investment Banking Department responsible for taking a company public or participating in other types of equity underwritings.

The NYSE's proposed rule change would address this potential conflict by prohibiting investment banking supervision and control, and thus should protect research analysts from undue influence by the Investment Banking Department. Further, NYSE believes that this prohibition would be a codification of one of the SIA's Best Practices recommendations.

- An exception is provided for written and oral communications, intermediated through the Legal or Compliance Department, to verify the accuracy of information and to identify potential conflicts of interest (Proposed NYSE Rule 472(b)(2)(i) and (ii)).
- This limited exception would further the purpose of the NYSE's proposed rule change in that research analysts will be shielded from pressure and influences of investment banking, while providing for the issuance of factually accurate research reports. Moreover, NYSE believes that the Legal or Compliance Department intermediation requirement is consistent with and furthers the purpose of both Federal securities laws and NYSE rules governing information barriers.[11]
- The subject company may not review or approve a research report prior to its distribution (Proposed NYSE Rule 472(b)(3)).
- However, the subject company may review sections of draft research reports excluding the research summary, research rating or price target to verify facts, provided the Legal or Compliance Department receives a complete draft prior to submission to the subject company (Proposed NYSE Rule 472(b)(3)(i)).
- After submission of the draft research report to the subject company, any changes in the proposed rating or price target must be justified by the Research Department, and receive prior written authorization from the Legal or Compliance Department (Proposed NYSE Rule 472(b)(3)(ii)).

The NYSE believes that its proposed rule change addresses concerns raised by AIMR in its issues paper that a subject company may attempt to pressure an analyst to issue a favorable research recommendation provided in a research report. Moreover, should an analyst change a recommendation on a subject company, after limited review by the subject company, such change would have to be justified to, and approved by, the Legal or Compliance Department.

The NYSE recognizes that the proposed rule amendment may require members and member organizations to make additions to their Legal or Compliance Departments, with concomitant financial costs to the members and member organizations.

- The subject company may not be notified of a ratings change until after the close of trading in the principal market one business day prior to the announcement of the change (Proposed NYSE Rule 472(b)(3)(iii)).

The NYSE believes that limiting advance notification of the ratings change should substantially reduce the

[11] According to NYSE, Section 15(f) of the Act provides, in part, that every registered broker or dealer shall establish, maintain, and enforce written policies and procedures designed to prevent the misuse of material non-public information. 15 U.S.C. 78o(f). *See also* NYSE Rules 98, 342, and 351.

possibility of the subject company and its insiders from taking advantage of such knowledge to their benefit, and to the detriment of its shareholders.

(2) Proposed amendments to NYSE Rule 472 prohibit and/or restrict the following in connection with associated persons and/or their household members and to any account in which an associated person has a financial interest or over which the associated person exercises discretion or control, in preparing research reports:

• Prohibits compensation linked to specific investment banking services transactions (Proposed NYSE Rule 472(h)).

• Prohibits ownership positions (including purchasing or receiving pre-IPO shares) if the issuer is principally engaged in the same type of business or industry classification as companies which the associated person covers in research reports (Proposed NYSE Rule 472(e)(1)).

• Prohibits trading in recommended securities thirty (30) days prior to and five (5) days after the issuance of research reports, changes in rating or price target (Proposed NYSE Rule 472(e)(2)).

• Prohibits trades contrary to the analyst's current recommendation (Proposed NYSE Rule 472(e)(3)).

The proposed amendments include exceptions to the above prohibitions for:

• A significant unanticipated change in the personal financial circumstances which is pre-approved by the Legal or Compliance Department (Proposed NYSE Rule 472(e)(4)(i));

• Thirty (30) and five (5) day blackout period for the issuance of research reports, change in rating or price target attributable to significant news or events regarding the subject company which are pre-approved by the Legal or Compliance Department (Proposed NYSE Rule 472(e)(4)(ii));

• Sale transactions for associated persons new to the member or member organization within thirty (30) days of employment (Proposed NYSE Rule 472(e)(4)(iii)) or being assigned the responsibility of preparing research reports with respect to a subject company (Proposed NYSE Rule 472(e)(4)(iv)); and

• Transactions in accounts not controlled by the associated person, *e.g.,* certain investment funds (Proposed NYSE Rule 472(e)(4)(v)), or registered investment company (Proposed NYSE Rule 472(e)(4)(vi)).

The NYSE believes that prohibitions on tying analyst compensation to specific investment banking deals, or on analyst ownership of pre-IPO shares in subject companies would help eliminate incentives analysts and members or member organizations may have to publish favorable research on such subject companies.

The NYSE believes that the proposed rule change would also impose certain restrictions on an analyst's personal trading activities to help ensure that research reports and recommendations are not influenced by the prospect of personal enrichment.

Further, the NYSE proposed rule change would prohibit a research analyst from trading in a manner contrary to the analyst's most current recommendation concerning a security. Thus, for example, the NYSE proposed rule change would prohibit a research analyst from selling a security while maintaining a ''buy'' recommendation.

(3) Proposed amendments to NYSE Rule 472 place the following prohibitions and/or restrictions on members or member organizations:

• The publishing of research reports within forty (40) calendar days of the completion of an initial public offering and ten (10) calendar days of the completion of a secondary offering in which a member or member organization acted as a manager or co-manager (Proposed NYSE Rule 472(f)(1) and (2)).

• An exception to the forty (40) and ten (10) day quiet period for a research report issued due to significant news or events about the issuer, provided it is pre-approved by the Legal or Compliance Department (Proposed NYSE Rule 472(f)(3)).

• Offering favorable research to companies as consideration or inducement for their business is prohibited (Proposed NYSE Rule 472(g)).

While NYSE recognizes that efficient markets require the dissemination of information on publicly traded companies, the proposed quiet periods are intended to minimize the concern that a managing underwriter has the ability to reward the subject company for its underwriting business by publishing favorable research soon after completion of the offering.

As proposed, the forty (40) and ten (10) calendar day quiet periods exceed those provided for under the federal securities laws.[12] Although the proposed quiet periods are longer than what is currently mandated, NYSE believes that they are warranted.

Recognizing that markets may be volatile, the proposed rule change would not prohibit a manager or co-manager from issuing a research report during these quiet periods due to significant news or a significant event concerning the subject company. In general, a ''significant'' news item or event is one that is expected to have a material impact on, or that reflects a material change to, the subject company's earnings, operations or financial condition.

The NYSE proposed rule change would include a provision that expressly prohibits a member or member organization from offering favorable research, a specific research rating or a specific price target as consideration or inducement for the receipt of business or compensation. While, according to NYSE, such action constitutes a violation of existing just and equitable principles of trade, the NYSE proposed rule change makes this prohibition explicit.

(4) Proposed amendments to NYSE Rule 472 impose requirements on members, member organizations, and associated persons preparing research reports to disclose the following in written communications and public appearances:

• whether, as of five (5) days prior to the publication of a research report, a member or member organization owns a position in excess of 1% of any class of common equity securities of the subject company (Proposed NYSE Rule 472 (k)(1)(i)(a));

• the associated person's or household member's financial interest in the subject company (Proposed NYSE Rule 472(k)(1)(i)(b));

• any actual, material conflict of interest of the member or member organization which the associated person knows or has reason to know exists at the time of the issuance of a research report or public appearance (Proposed NYSE Rule 472(k)(1)(i)(c));

• whether the member or member organization received compensation from subject companies within the past twelve (12) months or reasonably expects to receive compensation in the next three (3) months (Proposed NYSE Rule 472(k)(1)(ii)); and

• whether the associated person or household member is an officer, director, or advisory board member of the recommended issuer (Proposed NYSE Rule 472(k)(1)(iii)).

[12] According to NYSE, currently Rule 174(d) of the Securities Act of 1933 provides for a twenty-five (25) day prospectus delivery requirement for an issuer's IPO if the security is to be listed on an exchange or authorized for inclusion in an interdealer quotation system such as Nasdaq. The twenty-five (25) day quiet period coincides with the twenty-five (25) day prospectus delivery requirement under this rule. In addition, according to NYSE, the restrictions regarding publication of research reports in Rule 101 of Regulation M do not apply to research reports that comply with Rules 138 or 139 (available to S–2 and/or S–3 issuers) of the Securities Act.

NYSE proposes that all required disclosures must be clear, comprehensive and on the first page of a research report or must reference the reader to the page in which it is found (Proposed NYSE Rule 472(k)(2)).

As noted above, the NYSE proposed rule change would require a member or member organization to disclose in research reports whether the member, member organization or its affiliates received compensation from the subject company within the last 12 months, or reasonably expects to receive compensation within the next three months following publication of the research report. According to NYSE, this requirement would mandate definitive disclosure. Ambiguous or conditional language, such as disclosure that the member or member organization ''may have'' received compensation from the subject company, would not comply with the disclosure requirements of the proposed rule change.

The NYSE recognizes the possibility that this requirement might include compensation related to non-publicly announced transactions. However, both publicly announced and non-publicly announced related compensation present the potential for conflicts. Moreover, the NYSE does not believe that the proposed rule change would alert the Research Department or the investing public concerning non-public transactions, for at least two reasons.

First, the NYSE proposed rule change would require only disclosure that compensation was received by the member, member organization or its affiliates. It would not require disclosure concerning the specific amount received or expected to be received or the nature of the transaction, such as the fact that the member, member organization or its affiliates received the compensation in connection with non-public merger and acquisition services, or even that the compensation was received by the member or member organization (as opposed to one of its affiliates that is not engaged in investment banking). Second, according to NYSE, the term ''compensation'' is to be broadly interpreted to include the receipt of any consideration from the subject company. Given the breadth of the meaning of ''compensation,'' this disclosure requirement should not alert the Research Department whether the compensation is related to a non-public transaction.

According to the NYSE, research analysts would have to disclose in public appearances if the issuer of a recommended security is a client of the member, member organization or its affiliates, provided the analyst knows or has reason to know this fact. For purposes of this provision, an issuer would be deemed a ''client'' of the member, member organization or its affiliates, if the member, member organization or its affiliates received compensation from the issuer within the previous twelve months, or reasonably expects to receive compensation from the issuer within the next three months. This disclosure requirement thus would not apply with regard to a non-public transaction in which the issuer is a client of the member, member organization or its affiliates and the research analyst does not know and has no reason to know of this fact due to an information barrier imposed by the member or member organization.

(5) The proposed rule change would require additional disclosures in research reports to clarify the meaning of a member's or member organization's ratings system and provide investors with better information to evaluate and compare the quality of a member or member organization's research and the influence of possible conflicts in the assignment of ratings (Proposed NYSE Rule 472(k)(2)(iv)).

(6) Proposed amendments to NYSE Rule 351 would require members and member organizations to submit to NYSE, annually, a letter of attestation signed by a senior officer or partner, that the member or member organization has established and implemented written procedures reasonably designed to comply with the provisions of NYSE Rule 472 (Proposed NYSE Rule 351(f)). *See also* NYSE Rule 472(c) for the requirement to establish written procedures.

According to the NYSE, the scope of sales practice examinations conducted by NYSE will be expanded to ensure compliance with the new rule amendments.

4. NYSE's Statutory Basis

The Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(5)[13] of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organizations' Statements on Burden on Competition

NASDR and the NYSE do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

1. NASD

Written comments were neither solicited nor received for this proposed rule change. Previously, the NASD published for comment in NASD Notice to Members 01–45 (July 2, 2001) a more limited proposal to amend NASD Rule 2210, Communications With The Public. The NASD received 850 comments in response to that Notice. The NASD has not included a discussion of the comments received on that proposal because the current proposed rule change is significantly different and more comprehensive.

2. NYSE

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the SROs consent, the Commission will:

A. By order approve such proposed rule changes, or

B. institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

The Commission notes that the NASDR and NYSE have worked together to fashion these proposals. However, there are differences in the text of the proposals. The Commission specifically requests comment on the substance of proposed NASD Rule 2711, as amended; NYSE's proposed rule changes to NYSE Rule 472 and NYSE Rule 351; and whether there are any differences between the NYSE proposed Rule 472 and NASD proposed Rule 2711 that present compliance or interpretive issues. The Commission also specifically seeks comment on whether the text or substance of proposed NASD Rule 2711 and current NASD Rule 2210 present compliance or interpretive issues.[14] The Commission notes that, in

[13] 15 U.S.C. 78f(b)(5).

[14] *See, e.g.,* the discussion in Section II.A.1.g. above.

Section II above, the NASD has requested comment on several issues relating to proposed NASD Rule 2711.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal offices of the SROs. All submissions should refer to File Nos. SR–NASD–2002–21 and SR–NYSE–2002–09 and should be submitted by April 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6159 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45525; File No. SR–SCCP–2002–01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees Applicable to Philadelphia Stock Exchange Competing Specialists

March 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 9, 2002, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends SCCP's fee schedule to establish clearly that SCCP's fees, credits, discounts, and other charges which are based upon Philadelphia Stock Exchange (''Phlx'') equity specialists'' specialist activities also apply to competing specialists' specialist activities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clearly establish that any fees and charges (as well as any credits and discounts) included in SCCP's fee schedule which are based upon Phlx equity specialists' specialist activities also apply to competing specialists' specialist activities. On December 21, 2001, the Commission approved a Phlx proposed rule change to adopt rules designed to facilitate the establishment of a competing specialist program on Phlx.[3] The new rules provide for the approval by Phlx's Equity Allocation, Evaluation and Securities Committee of applications by qualified specialist units to act as competing specialists in one or more equity securities. Phlx contemplates commencing a competing specialist program in the near future. Under that program, equity securities traded on Phlx may have both a primary specialist (contemplated to be Phlx's current sole specialist in the security) and one or more competing specialists. At this time, SCCP is proposing to apply all specialist fees and charges (as well as any applicable credits or discounts) to Phlx specialists whether primary or competing.

For these reasons, SCCP believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[4] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants because SCCP will charge the same for primary and competing specialists.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2) thereunder.[6] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 34–45183 (December 21, 2001), 67 FR 118 (January 2, 2002) (order approving SR–Phlx–2001–97).

[4] 15 U.S.C. 78q–1(b)(3)(D).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to the File No. SR–SCCP–2002–01 and should be submitted by April 4, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6161 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

OFFICE OF SPECIAL COUNSEL

Agency Information Collection Activities; Request for Comment

AGENCY: Office of Special Counsel.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and implementing regulations at 5 CFR part 1320, the U.S. Office of Special Counsel (OSC), plans to request approval from the Office of Management and Budget (OMB) for use of three previously approved information collections consisting of customer survey forms.

OSC is required by law to conduct an annual survey of those who seek its assistance. The information collections are used to carry out that mandate. The current OMB approval for these collections of information expires on March 31, 2002; OSC does not plan to use the forms again until the next round of annual surveys beginning on October 1, 2002.

Current and former Federal employees, employee representatives, other Federal agencies, state and local government employees, and the general public are invited to comment on these information collections. Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of OSC functions, including whether the information will have practical utility; (b) the accuracy of OSC's estimate of the burden of the proposed collections 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.

DATES: Comments should be received by May 13, 2002.

ADDRESSES: Kathryn Stackhouse, Attorney, Planning and Advice Division, U.S. Office of Special Counsel, 1730 M Street, N.W., Suite 201, Washington, DC 20036–4505.

FOR FURTHER INFORMATION CONTACT: Kathryn Stackhouse, Attorney, Planning and Advice Division, at the address shown above; by facsimile at (202) 653–5151; or by telephone at (202) 653–8971. The survey forms for collection of information are available for review on OSC's Web site, at www.osc.gov/reading.htm.

SUPPLEMENTARY INFORMATION: OSC is an independent agency responsible for: (1) investigation of allegations of prohibited personnel practices defined by law at 5 U.S.C. 2302(b), and certain other illegal employment practices under titles 5 and 38 of the U.S. Code, affecting current or former Federal employees or applicants for employment, and covered state and local government employees; (2) the interpretation and enforcement of Hatch Act provisions on political activity in chapters 15 and 73 of title 5 of the U.S. Code; and (3) the provision of a secure channel through which Federal employees may make disclosures of information evidencing violations of law, rule or regulation; gross waste of funds; gross mismanagement; abuse of authority; or a substantial and specific danger to public health or safety.

OSC is required to conduct an annual survey of all individuals who seek its assistance. Section 13 of Public Law 103–424 (1994), codified at 5 U.S.C. 1212 note, states, in part: ''[T]he survey shall—(1) determine if the individual seeking assistance was fully apprised of their rights; (2) determine whether the individual was successful either at the Office of Special Counsel or the Merit Systems Protection Board; and (3) determine if the individual, whether successful or not, was satisfied with the treatment received from the Office of Special Counsel.'' The same section also provides that survey results are to be published in OSC's annual report to Congress. Copies of prior years' annual reports are available on OSC's Web site, at www.osc.gov/forms.htm#annual, or by calling OSC at (202) 653–2253.

OSC uses three forms to survey potential respondents in three types of matters closed during the previous fiscal year: Form OSC–48a is sent to complainants who alleged prohibited personnel practices, or other prohibited activities (including violations of the Hatch Act); Form OSC–48b is sent to persons who received a written advisory opinion on the application of the Hatch Act; and Form OSC–48c is sent to covered persons who made whistleblower disclosures to OSC. Each of these forms for information collection is described below. The forms to be submitted to OMB contain some minor modifications to existing forms, including increased use of ''plain English'' and minor format changes. In addition, the estimated number of annual respondents for each survey has been reduced to reflect estimated actual survey response rates, rather than surveys sent.

1. Title of Collection: OSC Survey—Prohibited Personnel Practice or Other Prohibited Activity (Agency Form Number OSC–48a; OMB Control Number 3255–0003)

Type of Information Collection Request: Approval of a previously approved collection of information that expires on March 31, 2002, with some revisions.

Affected public: Current and former Federal employees, applicants for Federal employment, state and local government employees, and their representatives.

Respondent's Obligation: Voluntary.

Estimated Annual Number of Respondents: 682.

Frequency: Annual.

Estimated Average Amount of Time for a Person to Respond: 20 minutes.

Estimated Annual Burden: 227 hours.

Abstract: This form is used to survey current and former Federal employees and applicants for Federal employment who have submitted allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC, and whose matter has been closed during the prior fiscal year (FY), on their experience at OSC. Specifically, the survey asks questions relating to whether the respondent was: (1) apprised of his or her rights; (2) successful at the OSC or at the Merit Systems Protection Board; and (3) satisfied with the treatment received at the OSC.

2. Title of Collection: OSC Survey—Hatch Act Advisory Opinion (Agency Form Number OSC–48b; OMB Control Number 3255–0003)

Type of Information Collection Request: Approval of a previously approved collection of information that expires on March 31, 2002, with some revisions.

Affected public: Current and former Federal employees, applicants for Federal employment, state and local government employees, and their representatives.

Respondent's Obligation: Voluntary.

Estimated Annual Number of Respondents: 65.

Frequency: Annual.

Estimated Average Amount of Time for a Person to Respond: 12 minutes.

Estimated Annual Burden: 13 hours.

Abstract: This form is used to survey those who request a written advisory opinion on the application of the Hatch Act, and whose matter has been closed during the prior FY, on their experience at OSC. Specifically, the survey asks questions relating to whether the respondent was: (1) apprised of his or her rights; (2) successful at the OSC; and (3) satisfied with the treatment received at the OSC.

3. Title of Collection: OSC Survey—Whistleblower Disclosure (Agency Form Number OSC–48c; OMB Control Number 3255–0003)

Type of Information Collection Request: Approval of a previously approved collection of information that expires on March 31, 2002, with some revisions.

Affected public: Current and former Federal employees, applicants for Federal employment, and their representatives.

Respondent's Obligation: Voluntary.

Estimated Annual Number of Respondents: 93.

Frequency: Annual.

Estimated Average Amount of Time for a Person to Respond: 15 minutes.

Estimated Annual Burden: 23 hours.

Abstract: This form is used to survey those who have filed a whistleblower disclosure, and whose matter has been closed during the prior FY, on their experience at OSC. Specifically, the survey asks questions relating to whether the respondent was: (1) apprised of his or her rights; (2) successful at the OSC; and (3) satisfied with the treatment received at the OSC.

Dated: March 8, 2002.

Elaine D. Kaplan,

Special Counsel.

[FR Doc. 02–6168 Filed 3–13–02; 8:45 am]

BILLING CODE 7405–01–S

DEPARTMENT OF STATE

[Public Notice 3946]

Culturally Significant Objects Imported for Exhibition Determinations: ''Greuze The Draftsman''

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Greuze The Draftsman,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Frick Collection, New York, NY from on or about May 14, 2002 to on or about August 4, 2002, and at the J. Paul Getty Museum from on or about September 10–December 1, 2002, and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 6, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 02–6150 Filed 3–13–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3944]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Quest for Immortality: Treasures of Ancient Egypt''

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition''The Quest for Immortality: Treasures of Ancient Egypt'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about April 21, 2002 to on or about August 11, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 6, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 02–6151 Filed 3–13–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3945]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Balkans Junior Faculty Development Program

SUMMARY: The Office of Academic Exchange Programs/European Programs Branch of the Bureau of Educational and Cultural Affairs announces an open competition for the new Balkans *Junior Faculty Development Program* (JFDP). Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501 (c) (3) may submit proposals to place visiting faculty from Bosnia and Herzegovina, Macedonia, Montenegro and Serbia at U.S. universities in a one academic year (nine months) teacher training and curriculum development program. The grantee organization for this new program will support and oversee the activities of the faculty throughout their stay in the United States, including their undertaking a practical internship at the end of the academic program (an additional two months). In addition, the

grantee organization will recruit and select candidates for the JFDP in Bosnia and Herzegovina, Macedonia, Montenegro and Serbia to begin the program in the United States in Fall 2003.

Program Information

Overview

The new Balkans Junior Faculty Development Program (JFDP) will offer fellowships to university instructors from Bosnia and Herzegovina, Macedonia, Montenegro and Serbia. Selected through an open, merit-based competition, JFDP Fellows will attend U.S. universities for one academic year to work with faculty mentors and to audit courses in order to develop new curricula and approaches to teaching in their fields of study. The JFDP will encourage its Fellows to develop professional relationships with the U.S. academic community, and to forge ties between their U.S. colleagues and colleagues in their home countries, and to share their experiences and knowledge with U.S. students and professors. Throughout their stay in the United States, JFDP Fellows will attend conferences and seminars, and participate in two-month practical internships after completing the academic component of the program. The goals of the program are to allow U.S. scholars and scholars from the participating countries to exchange ideas on curriculum design and teaching, and to increase collaboration and cooperation between universities in the United States and Bosnia and Herzegovina, Macedonia, Montenegro and Serbia. Participation in the JFDP under this grant is restricted to university instructors from Bosnia and Herzegovina, Macedonia, Montenegro and Serbia in the following fields of study: American studies, business administration, economics, education administration, environmental studies, history, international affairs, journalism, law, library science, political science, public administration and public policy.

Programs must comply with J–1 Visa regulations. Subject to the availability of funds, it is anticipated that this grant will begin on or about July 1, 2002. Please refer to the Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. The Bureau anticipates awarding one grant in the amount of $1,240,000 ($140,000 for Bosnia and Herzegovina; $550,000 for Macedonia; $150,000 for Montenegro; and $400,000 for Serbia) to support the program and administrative costs required to implement this program. The Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

(1) Overseas recruitment and selection of candidates

(2) Participant travel expenses, stipends, accident and sickness insurance, visa fees, professional development costs

(3) Orientations, participant conferences

(4) Host university fees

(5) Alumni and follow-on activities

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/E/EUR–02–07.*

FOR FURTHER INFORMATION, CONTACT: The Office of Academic Exchanges, ECA/A/E/EUR, Room 246, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, tel. (202) 205–0525, fax (202) 260–7985, *exchanges@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Sheila Casey on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, May 10, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/EUR–02–07, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs Sections at U.S. Embassies (or Public Affairs Office in Montenegro) for review, with the goal of reducing the time it takes to obtain Embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Deadlines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of

these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as by the Public Diplomacy Sections overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Development and Management:* The proposal should exhibit originality, substance, precision, innovation, and relevance to the Bureau's mission. Objectives should be reasonable, feasible and flexible. The proposal should clearly demonstrate how the grantee organization will meet the program's objectives. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. The agenda should adhere to the program overview and guidelines described above.

2. *Multiplier Effect/Impact:* The JFDP should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. The proposal should include creative ways to involve program participants in U.S. communities.

3. *Support of Diversity:* The proposal should demonstrate the grantee organization's commitment to promoting the awareness and understanding of diversity through participant recruitment efforts, and through its selection of host universities.

4. *Institution's Record/Ability:* The proposal should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau/USIA grants as determined by the Bureau's Grants Division. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals.

5. *Follow-on and Alumni Activities:* The proposal should provide a plan for continued follow-on activity that insures that Bureau-supported programs are not isolated events, but have meaning and scope beyond the time the actual exchange took place.

6. *Project Evaluation:* The proposal should include a plan to evaluate the success of the JFDP, both during and after the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique, plus a description of methodologies that can be used to link outcomes to original project objectives. The grantee organization will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

7. *Cost-effectiveness and Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided in part through the Support for East European Democracy (SEED) Act.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: March 5, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–6149 Filed 3–13–02; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Deadline for Notification of Intent To Use the Airport Improvement Program (AIP) Sponsor Entitlement, Cargo Funds, and Nonprimary Entitlement Funds for Fiscal Year 2002

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces May 1, 2002, as the deadline for each airport sponsor to notify the FAA that it will use its fiscal year 2002 entitlement funds to accomplish projects identified in the Airports Capital Improvement Plan that was formulated in the spring of 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Lou, Manager, Program Implementation Branch, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP–520, on (202) 267–8812.

SUPPLEMENTARY INFORMATION: Section 47105(f) of Title 49, United States Code, provides that the sponsor of each airport to which funds are apportioned shall notify the Secretary by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for the funds apportioned to it (entitlements). This notice applies only to those

airports that have received such entitlements, except those nonprimary airports located in designated Block Grant States. Notification of the sponsor's intent to apply during fiscal year 2002 for any of its available entitlement funds including those unused from prior years, shall be in the form of inclusion of projects for fiscal year 2002 in the Airports Capital Improvement Plan.

This notice is promulgated to expedite and prioritize grants in the final quarter of the fiscal year. Absent an acceptable application by May 1, 2002, FAA will defer an airport's entitlement funds until the next fiscal year. Pursuant to the authority and limitations in section 47117(f), FAA will issue discretionary grants in an aggregate amount not to exceed the aggregate amount of deferred entitlement funds. Airport sponsors may request unused entitlements after September 30, 2002.

Issued in Washington, DC on March 6, 2002.

Stan Lou,

Manager, Program Implementation Branch.

[FR Doc. 02–6133 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from April 16–19, 2002, from 8 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Federal Aviation Administration Headquarters Building, Bessie Coleman Conference Center, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. David W. Madison, Acting Executive Director, ATPAC, Air Traffic Planning and Procedures, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held April 16 through April 19, 2002, at the Federal Aviation Administration Headquarters Building, Bessie Coleman Conference Center, 800 Independence Avenue, SW., Washington, DC 20591.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above or not later than April 12, 2002. The next quarterly meeting of the FAA ATPAC is planned to be held from July 15–18, 2002, in Seattle, Washington.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on March 4, 2002.

David W. Madison,

Acting Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 02–6130 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Fayetteville Regional Airport, Fayetteville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Fayetteville Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 15, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bradley S. Whited, A.A.E., Airport Director, of the city of Fayetteville at the following address; Mr. Bradley Whited, A.A.E., Airport Manager, Fayetteville Regional Airport, P.O. Box 64218, Fayetteville, NC 28306.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Fayetteville under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Southern Region, Atlanta Airports District Office, Mrs. Tracie D. Kleine, Program Manager, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, (404) 305–7148.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Fayetteville Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 4, 2002, the FAA determined that the application to use the revenue from a PFC submitted by the city of Fayetteville was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 13, 2002.

The following is a brief overview of the application.

PFC Application No.: 02–02–U–00–FAY.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 2000.

Proposed charge expiration date: November 1, 2005.

Total estimated net PFC revenue: $1,026,513.

Brief description of proposed project(s): Construct North General

Aviation Ramp, Security System Upgrade, Phase II, Design and Construct Runway 04 Safety Area, Phase I, Acquire Land, Renovate Terminal Building, Phase II, Construct Runway 04 Safety Area, Phase II, Renovate Terminal Building, Phase III, Construct Runway 22 Safety Area, Construct non-license Vehicle Road, Construct Jet Bridge Modification, Construct Taxiway 'K'.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Fayetteville Regional Airport.

Issued in College Park, Georgia on March 6, 2002.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 02–6128 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–04–C–00–RDM To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Roberts Field, Submitted by the City of Redmond, Roberts Field, Redmond, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Roberts Field under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 15, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Carolyn S. Novick, Airport Manager, at the following address: City of Redmond, PO Box 726, Redmond, Oregon 97756.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Roberts Field, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington, 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 02–04–C–00–RDM to impose and use PFC revenue at Roberts Field, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 6, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Redmond, Roberts Field, Redmond, Oregon, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 24, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1, 2003.

Proposed charge expiration date: April 1, 2006.

Total requested for use approval: $1,968,545.

Brief description of proposed project: Expand Terminal Access Road; Design of Terminal Expansion; Install Perimeter Fence; Wildlife Mitigation; Design and Rehabilitate Air Carrier Terminal Apron; Rock Obstruction Removal.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFC's: Air Taxis which comprise less than one percent of the total enplanements at Roberts Field.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Roberts Field.

Issued in Renton, Washington on March 6, 2002.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–6132 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34179]

Bulkmatic Railroad Corporation—Operation Exemption—Bulkmatic Transport Company

Bulkmatic Railroad Corporation (BRC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 3.9 miles of railroad right-of-way and trackage at transloading and freighthouse facilities known as Bulkmatic Distribution Center, at Chicago Heights, IL (line).[1]

The transaction was scheduled to be consummated no earlier than March 6, 2002, the effective date of the exemption (7 days after the exemption was filed).[2]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] The Board exempted BRC's acquisition by sublease of the line from Bulkmatic Transport Company. *See Bulkmatic Railroad Corporation-Acquisition Exemption-Bulkmatic Transport Company,* STB Finance Docket No. 34145 (STB served Jan. 15, 2002). The Board also exempted the Chicago Heights Switching Company's (CHSC) operation of the line. *See Chicago Heights Switching Company-Operation Exemption-Bulkmatic Railroad Corporation,* STB Finance Docket No. 34146 (STB served Jan. 15, 2002). BRC states that the exemptions in STB Finance Docket Nos. 34145 and 34146 have not been consummated. BRC also states that the exemption in STB Finance Docket No. 34145 will go forward but that BRC will be the operator of the line in lieu of CHSC.

[2] On March 4, 2002, a petition to reject and/or to revoke the exemptions in STB Finance Docket Nos. 34145 and 34179 and for stay of the effective date of the exemption in STB Finance Docket No. 34179 was filed by Joseph C. Szabo, for and on behalf of the United Transportation United-Illinois Legislative Board (UTU–IL). By decision served on March 5, 2002, the petition for stay was denied. That decision also noted that UTU-IL had not supported its request for rejection of the notices and that the request to revoke the exemptions would be addressed in a subsequent decision. *See Bulkmatic Railroad Corporation-Acquisition and Operation Exemption-Bulkmatic Transport Company,* STB Finance Docket No. 34145 *et al.* (STB served Mar. 5, 2002). In the decision served on March 5, 2002, the title of STB Finance Docket No. 34145 was incorrect. The correct title of STB Finance Docket No. 34145 is shown in note 1 above.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34179, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David C. Dillon, Esq., Dillon & Nash, 111 West Washington Street, Suite 719, Chicago, IL 60602.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: March 7, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6023 Filed 3–13–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34174]

Grand Trunk Western Railroad Incorporated—Trackage Rights Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company

Pennsylvania Lines LLC (PRR), as owner, and Norfolk Southern Railway Company (NS), as operator, pursuant to a written trackage rights agreement entered into among Grand Trunk Western Railroad Incorporated, PRR and NS, have agreed to grant nonexclusive overhead trackage rights to GTW [1] between milepost UW–2.4 of the former Chicago Junction Railway Company to a point approximately 250 feet south of 43rd Street via Tracks #237 and #222, and between 43rd Street and a point approximately 100 feet south of 43rd Street, via Track #224, all in Chicago, IL, a total distance of approximately 0.7 miles.

The transaction was scheduled to be consummated on or after March 7, 2002, the effective date of the exemption.

The purpose of the trackage rights is to allow GTW to connect with Track #224.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S. C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34174, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Michael J. Barron, Jr., 455 North Cityfront Plaza Drive, Chicago, IL 60611–5317.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

Decided: March 7, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6022 Filed 3–13–02; 8:45 am]

BILLING CODE 4915–00–P

[1] GTW is a wholly owned subsidiary of Canadian National Railway Company.

DEPARTMENT OF VETERANS AFFAIRS (VA)

President's Task Force To Improve Health Care Delivery for Our Nation's Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans scheduled to take place on Wednesday, March 13, 2002, beginning at 8:00 a.m. until 5:30 p.m. The meeting will be held in the Horizon Ballroom, the Ronald Reagan Building International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC, and is open to the public.

The purpose of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is to:

(a) Identify ways to improve benefits and services for Department of Veterans Affairs (VA) beneficiaries and for Department of Defense (DoD) military retirees who are also eligible from VA, through better coordination of the activities of the two departments;

(b) Review barriers and challenges that impede VA and DoD coordination, including budgeting processes, timely billing, cost accounting, information technology, and reimbursement. Identify opportunities to improve such business practices to ensure high quality and cost effective health care; and

(c) Identify opportunities for improved resource utilization through partnership between VA and DoD to maximize the use of resources and infrastructure, including: buildings, information technology and data sharing systems, procurement of supplies, equipment and services, and delivery of care.

During this meeting, the Task Force work groups will continue to obtain current and updated information and to validate and/or clarify that information. The work groups will make presentations on the various topics to the members.

Interested parties can provide written comments to Mr. Dan Amon, Communications Director, President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, 1401 Wilson Boulevard, 4th Floor, Arlington, Virginia, 22209.

Dated: March 5, 2002.

By direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–6104 Filed 3–13–02; 8:45 am]

BILLING CODE 8320–01–M

Notices

Federal Register

Vol. 67, No. 50

Thursday, March 14, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV01–81–2NC]

Notice of Request for OMB Approval and Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the Agricultural Marketing Service (AMS) is submitting to the Office of Management and Budget (OMB) for approval and extension the information collection on prune trees grown in California per clause (3) of Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c). This information collection was approved as an emergency package through May 31, 2002, and assigned OMB No. 0581–0201.

DATES: Comments on this notice must be received by May 13, 2002.

FOR FURTHER INFORMATION CONTACT: Contact Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20090–6456; Tel: (202) 720–2491, Fax: (202) 720–8983, or E-mail: *moab.docketclerk@usda.gov.*

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: California Prune/Plum Tree Removal Program (''the program'').

OMB Number: 0581–0201.

Expiration Date of Approval: May 31, 2002.

Type of Request: Approval and extension of a currently approved information collection.

Abstract: The information collection requirements in this request are applied only to those growers who voluntarily participate in the tree removal program. The information is essential to carry out the program, and to administer release of payments to participating growers.

This program is intended to reestablish prune/plum growers' purchasing power and is authorized under clause (3) of section 32 of the Act of August 24, 1935, as amended (Section 32). Clause (3) of Section 32 authorizes USDA to ''reestablish farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption.'' Section 32 also authorizes USDA to use Section 32 funds ''* * * at such times, and in such manner, and in such amounts, as * * *'' is found to ''* * * effectuate substantial accomplishments of any one or more of the purposes of this section.'' Furthermore, ''Determinations by the Secretary as to what constitutes * * * normal production for domestic consumption shall be final.''

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of clause (3) of Section 32 and the rules and regulations issued thereunder.

The California prune industry has requested a tree removal program estimated to cost $20 million. The industry asked the Department of Agriculture (USDA) to provide $17 million in Section 32 funds. The industry has contributed $3 million. California's prune bearing acreage is expected to reach 94,000 acres next year if no acreage is removed. The industry's objective is to remove a minimum of 20,000 bearing acres of prune trees. Prune trees are generally planted 100 to 140 trees per acre. With an average yield of 2.2 tons per acre (5-year average), about 44,000 tons of prune variety plums would be removed from production under the program. Such a decrease will more closely align prune supply with demand while assuring an adequate supply for all market needs. If less productive acres are removed (yields less than 2.2 tons per acre) or less than 20,000 acres are removed, then the reduction in production would be less than 44,000 tons. With prune supplies more in line with market needs, market conditions are expected to stabilize and producer prices are expected to rise to more remunerative levels.

Two forms are needed to implement the program. The first form is ''Application for Prune Tree Removal Program'' (FV–298). Growers who wish to participate in the program must submit this form to the Prune Marketing Committee (Committee), which administers the program. Upon receipt of FV–298, the Committee will send the grower a ''Notification of Prune Tree Removal'' (FV–299) that requires only the grower's signature certifying that the trees were removed, and the date of removal. The notification also must be signed by a Committee staff member to verify actual removal of the trees. Growers are required to maintain copies of both forms for at least three years.

These forms require the minimum amount of information necessary to carry out the program. In addition, USDA has developed these forms in consultation with the Committee on behalf of the California prune industry. Because this program is not maintained by any other agency, the information collected is not available from any other existing records.

The information collected will be used only by authorized representatives of the USDA, including AMS' Fruit and Vegetable Programs' regional and headquarters staff, and authorized employees of the Committee. All information collected will be treated as confidential (as indicated on the forms), and will be in conformance with the Privacy Act and the Freedom of Information Act.

AMS estimates that the total annual burden are 250 hours. The proposed request for approval of the information collection under the program is as follows:

FV–298—Application for Prune Tree Removal Program Reporting:

Estimate of Burden per Response: 30 minutes.

Respondents: California prune growers.

Estimated Number of Respondents: 480.

Estimated Annual Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 240 hours.

Recordkeeping:

Estimate of Burden: 1.2 minutes.

Respondents: California prune growers.

Estimated Number of Respondents: 480.

Estimated Annual Time per Respondent: 1 hour.

Estimated Total Annual Burden on Respondents: 10 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of AMS, including whether the information will have practical utility; (2) the accuracy of AMS 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 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.

Comments should reference OMB No. 0581–0201 and the California Prune Tree Removal Program, and be mailed to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20090–6456; Fax (202) 720–5698; or E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at room 2525–S, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20090–6456; or telephone: (202) 720–2491.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6099 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–078–1]

Monsanto Co.; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Corn Genetically Engineered for Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Monsanto Company seeking a determination of nonregulated status for corn designated as Event MON 863, which has been genetically engineered for insect resistance. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn presents a plant pest risk. We are also making available for public comment an environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by May 13, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comments (an original and three copies) to Docket No. 00–078-l, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 00–078–1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and Docket No. 00–078–1 on the subject line.

You may read a copy of the petition for a determination of nonregulated status submitted by Monsanto Company, the environmental assessment, and any comments we receive on this notice of availability in our reading room. The reading room is located in room 1141, USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure that someone is available to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–8365. To obtain a copy of the petition or the environmental assessment, contact Ms. Kay Peterson at (301) 734–4885; e-mail: Kay.Peterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On May 17, 2001, APHIS received a petition (APHIS Petition No. 01–137–01p) from Monsanto Company (Monsanto) of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for corn (*Zea mays* L.) designated as Corn Rootworm Protected Corn Event MON 863 (MON 863), which has been genetically engineered for resistance to the larvae of certain corn rootworm (CRW) species. The Monsanto petition states that the

subject corn should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, MON 863 corn has been genetically engineered to express a Cry3Bb1 insecticidal protein derived from the common soil bacterium *Bacillus thuringiensis* subsp. *kumamotoensis (Bt kumamotoensis).* The petitioner states that the Cry3Bb1 protein is effective in controlling the larvae of CRW pests (Coleoptera, *Diabrotica* spp.). The subject corn also contains the *nptII* marker gene derived from the bacterium *Escherichia coli.* The *nptII* gene encodes neomycin phosphotransferase type II and is used as a selectable marker in the initial laboratory stages of plant cell selection. Expression of the added genes is controlled in part by gene sequences from the plant pathogens cauliflower mosaic virus and *Agrobacterium tumefaciens.* Particle gun acceleration technology was used to transfer the added genes into the recipient inbred yellow dent corn line A634.

MON 863 corn has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. This corn has been field tested since 1998 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of the subject corn, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In § 403 of the Plant Protection Act (7 U.S.C. 7701–7772), plant pest is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of a pesticide or involve a different use pattern for the pesticide, EPA must approve the new or different use. Accordingly, Monsanto has filed an application to register the active ingredient *B. thuringiensis* Cry3Bb protein and the genetic material necessary for its production in corn (66 FR 15435–1536, March 19, 2001). When the use of the pesticide on the genetically modified plant would result in an increase in the residues in a food or feed crop for which the pesticide is currently registered, or in new residues in a crop for which the pesticide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA. EPA has established an exemption from the requirement of a tolerance for residues of the *B. thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production in or on all raw agricultural commodities (66 FR 24061–24066, May 11, 2001).

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. The petitioner has completed consultation with FDA on the subject corn.

In accordance with the regulations in 7 CFR 340.6(d), we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for determination of nonregulated status from any interested person for a period of 60 days from the date of this notice. We are also soliciting written comments from interested persons on the environmental assessment (EA) prepared to provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risk associated with a proposed determination of nonregulated status for MON 863 corn. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). The petition and the EA, and any comments received on these documents, are available for public review, and copies of the petition and the EA may be ordered (see the **FOR FURTHER INFORMATION CONTACT** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. After reviewing and evaluating the comments on the petition and the EA and other data and information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Monsanto's insect-resistant MON 863 corn and the availability of APHIS' written decision.

Authority: 7 U.S.C. 166, 1622n, 7756, and 7761–7772; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 7th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6135 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Agricultural Management Assistance

AGENCY: Commodity Credit Corporation, United States Department of Agriculture.

ACTION: Notice of availability of program funds for Agricultural Management Assistance.

SUMMARY: This notice announces the availability of funds for Agricultural Management Assistance (AMA) to implement Section 524(b) of the Federal Crop Insurance Act, 7 U.S.C. 1524(b), as added by Section 133 of the Agricultural Risk Protection Act of 2000, Public Law 106–224. The Commodity Credit Corporation (CCC) administers the funds under the general supervision of a Vice President of the CCC who is the Chief of the Natural Resources Conservation Service (NRCS). CCC is

announcing the availability of funds under Section 524(b) of the Federal Crop Insurance Act. Section 524(b) authorizes the Secretary of Agriculture to use $10 million of CCC funds annually for cost-share assistance to producers in 15 States in which participation in the Federal Crop Insurance Program is historically low. The 15 States include Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. The cost-share assistance will encourage and assist producers in the selected States to adopt natural resources conservation practices and investment strategies that will reduce or mitigate risks to their agricultural enterprises.

DATES: March 14, 2002 to September 30, 2002.

ADDRESSES: Address all comments to: Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890.

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, Director, or Gary Gross, AMA Program Manager, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013, (202) 720–1845, fax: 202–720–4265; Submit electronic comments to: *mark.berkland@usda.gov or gary.gross@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 524(b) of the Federal Crop Insurance Act, 7 U.S.C. 1524(b), was added by Section 133 of the Agricultural Risk Protection Act of 2000, (Pub. L. 106–224, June 22, 2000). Section 524(b) authorizes the Secretary of Agriculture (Secretary) to use $10 million of CCC funds for cost-share assistance in 15 States where participation in the Federal Crop Insurance program is historically low. The 15 States designated by the Secretary are Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. The Risk Management Agency (RMA), Agricultural Marketing Service (AMS), and NRCS will administer the funds in such amounts per agency as determined by the Secretary.

Section 524(b)(2)(A), (B), and (C), provides for cost-share assistance to producers to: construct or improve water management structures or irrigation structures; plant trees for windbreaks or improve water quality; and mitigate risks through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic farming.

Section 524(b)(2)(D) and (E), provides for cost-share assistance to producers to: enter into futures, hedging, or options contracts in a manner designed to help reduce production, price, or revenue risk; and enter into agricultural trade options as a hedging transaction to reduce production, price, or revenue risk.

This notice deals with the funding administered by NRCS, approximately $7 million in fiscal year 2002, to carry out the conservation provisions of Section 524(b)(2)(A),(B), and (C).

The Chief of NRCS, on behalf of CCC, will determine the funds available to the States for financial and technical assistance.

The NRCS State Conservationist, in consultation with the State Technical Committee, will determine eligible practices using a locally led process. Eligible conservation practices will be those practices that improve soil or water management or water quality, or mitigate financial risk through resource conservation. AMA does not provide for incentive payments.

There will be a continuous signup period, with ranking cutoff dates as determined by the State Conservationist in consultation with the State Technical Committee.

The State Conservationist, in consultation with the State Technical Committee, will select applications based on State-developed ranking criteria and a ranking process, taking into account local and state priorities. The State Conservationist may also delegate the selection of applications to the local designated conservationist who will work in consultation with the local USDA Work Group.

AMA Requirements

CCC will accept applications throughout the year. The State Conservationist, in consultation with the State Technical Committee, will widely distribute information on the availability of assistance and the State-specific goals. Information will be provided that explains the process to request assistance.

Applicants must own or control the land for which assistance is being sought and agree to implement specific eligible conservation practices on the land. The applicants must meet the definition of ''person'' as set out in Section 1001(5), of the Food Security Act, 7 U.S.C. 1308(5), as determined by the Farm Service Agency (FSA). Any cooperative association of producers that markets commodities for producers shall not be considered to be a person eligible for payment. The status of an individual or entity on the date of the application shall be the basis on which the determination of the number of persons involved in the farming operation is made. There will be a 5 to 10 year cost-share agreement period to install eligible practices. Cost-share practices need to be maintained for the life of the practice. The maximum payment to any one person under the AMA program is $50,000 for any fiscal year.

The Federal share of cost-share payments shall be 75 percent of the cost of an eligible practice(s), based on percent of actual cost, percent of actual cost with not-to-exceed limits, flat rates, or average costs. Producers will be paid upon certification of the completion of the approved practice(s). Producers may contribute to the application of a cost-share practice through in-kind contributions. Eligible in-kind contributions include: personal labor; use of personal equipment; donated labor or materials; and use of on-hand or used materials that meet the requirements for the practice to be installed. In no instance shall the total financial contributions for an eligible practice from all public and private entity sources exceed 100 percent of the actual cost of the practice. Cost-share payments will not be made to a participant who has applied or initiated the application of a conservation practice prior to approval of the cost-share agreement.

Eligible participants must have control of the land for the life of the cost-share agreement period. An exception may be made by the Chief of NRCS in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief of NRCS determines that there is sufficient assurance of control; or the applicant is a tenant of the land involved in agricultural production and the applicant provides CCC with the written concurrence of the landowner in order to apply an eligible practice(s).

Eligible land includes land used as agricultural land on which NRCS determines that assistance is needed to construct or improve watershed management structures or irrigation structures; plant trees to form windbreaks or to improve water quality; or to mitigate financial risk through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic

farming. Additionally, land may only be considered for enrollment in AMA if NRCS determines that the land is privately-owned or publicly-owned where the land is under private control for the length of the cost-share agreement and is included in the participant's operating unit. The conservation practices installed on public land must contribute to an improvement in the identified natural resource concern as well as benefit private land. The applicant must provide CCC with written authorization from the government landowner to apply the conservation practices. Land that is Federally recognized Tribal, BIA allotted, or Indian trust land may be considered for enrollment in AMA.

Applicants must submit an application (CCC–1200 form) to CCC to be considered for participation in AMA. Any producer who has eligible land may obtain and submit an application for participation in AMA at a USDA service center. Producers who are members of a joint operation shall file a single application for the joint operation. A NRCS conservationist will work with the applicant to collect the information necessary to evaluate the application using the State-developed ranking criteria.

Conservation Plan Requirement

A conservation plan is required for the area to be included in the AMA cost-share agreement and becomes the basis for developing the cost-share agreement. The conservation plan must be acceptable to NRCS; be approved by the local conservation district; be signed by the participant, designated conservationist, and the conservation district; and clearly identify the conservation practices that will be cost-shared with AMA funds and the non-cost shared practices needed in the conservation plan.

Cost-Share Agreement Requirements

Participants will enter into a cost-share agreement agreeing to implement eligible conservation practices. An AMA cost-share agreement will incorporate by reference all portions of a unit applicable to AMA and be for a duration of 5 to 10 years.

Cost-share agreements will incorporate all provisions as required by law or statute, including requirements to not conduct any practices on the farm or ranch unit of concern that would tend to defeat the purposes of the cost-share agreement; refund to CCC any AMA payments received with interest, and forfeit any future payments under AMA, on the violation of a term or condition of the cost-share agreement; refund all AMA payments received on the transfer of the right and interest of the producer in land subject to the cost-share agreement, unless the transferee of the right and interest agrees to assume all obligations of the cost-share agreement; and supply information as required by CCC to determine compliance with the cost-share agreement and requirements of AMA. The participant and NRCS must certify that a conservation practice is completed in accordance with the cost-share agreement before CCC will approve any cost-share payments.

With respect to land under an AMA cost-share agreement which is inherited during the cost-share agreement period, the $50,000 per fiscal year limitation to any person will not apply to the extent that the payments from any cost-share agreements on the inherited land cause an heir, who was party to an AMA cost-share agreement on other lands prior to the inheritance, to exceed the annual limit.

With regard to cost-share agreements on tribal land, Indian trust land, or BIA allotted land, payments exceeding $50,000 per fiscal year limitation may be made to the tribal venture if an official of the BIA or tribal official certifies in writing that no one person directly or indirectly will receive more than the fiscal year limitation.

Conservation Practice Operation and Maintenance

The cost-share agreement will provide for the operation and maintenance of the conservation practices applied under the cost-share agreement. The participant will operate and maintain the conservation practices for their intended purposes as agreed-to as part of the cost-share agreement, and form CCC–1245, Practice Approval and Payment Application.

Additional Requirements and Information

Additional requirements and information pertaining to the AMA program relating to cost-share agreements, administrative requirements, and other matters can be found on CCC form CCC–1200, Conservation Program Contract, and the appendix to form CCC–1200, both of which are available at local USDA service centers.

Civil Rights

NRCS and CCC have collected civil rights data on farmers/ranchers participating in conservation programs. Based on past participation, it is estimated that the funding being made available with this notice will not negatively or disproportionately affect minorities, women, or persons with disabilities who are program beneficiaries or applicants for program benefits in NRCS or CCC assisted programs.

Environmental Evaluation

This assistance, administered by NRCS, will be funded at a level for 2002 as determined by the Secretary. Depending on the level of funding, and based on the participation in existing soil and water conservation programs, it is estimated that this assistance could result in approximately 230 cost-share agreements in the 15 States. On each farm or ranch, during the conservation planning process, the environmental effects of any proposed actions are evaluated on a case by case basis. That evaluation is used to determine whether further environmental analysis is required. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared for this notice.

Signed in Washington, DC, on August 23, 2001.

Thomas A. Weber,

Deputy Chief for Programs, Natural Resources Conservation Service.

[FR Doc. 02–6171 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Public Law 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Sierra and Sequoia National Forests' Resource Advisory Committee (RAC) for Fresno County will meet on March 19, 2002, 6:30–9:30 p.m. The Fresno County Resource Advisory Committee will meet at the Districts Ranger's office Prather, CA. The purpose of the meeting is for the Resource Advisory Committee to receive project proposals for recommendations to the Forest Supervisor for expenditure of Fresno County Title II funds.

DATES: The Fresno RAC meeting will be held on March 19, 2002. The meeting will be held from 6:30 p.m. to 9:30 p.m.

ADDRESSES: The Fresno County RAC meeting will be held at the Sierra

National Forest, Pineridge/Kings River Districts Ranger office, 29688 Auberry Road, Prather, CA.

FOR FURTHER INFORMATION CONTACT: Sue Exline, USDA, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93611. (559) 297–0706 ext. 4804; E-MAIL *skexline@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review and approve the March 19, 2002 meeting notes; (2) Discuss new business of the RAC if applicable; (3) Consideration of Title II Project proposals from the public and/or the RAC members; (4) Determine the date and location of the next meeting; (5) Public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 1, 2002.

Nancy Fleenor,

Ecosystem Coordinator.

[FR Doc. 02–6105 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Public Rights-of-Way Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) established a Public Rights-of-Way Access Advisory Committee (Committee) to assist the Board in developing a proposed rule on accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. This document announces the next meeting of the technical assistance sub-committee of that Committee, which will be open to the public.

DATES: The meeting of the sub-committee is scheduled for April 4, 2002 (beginning at 9 a.m. and ending at 5 p.m.) and April 5, 2002 (beginning at 9 a.m. and ending at 12:30 p.m.).

ADDRESSES: The meeting will be held at the Marriott Riverwalk, 711 East Riverwalk, San Antonio, TX 78205.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 125 (Voice); (202) 272–5449 (TTY). E-mail *windley@access-board.gov.* This document is available in alternate formats (cassette tape, Braille, large print, or ASCII disk) upon request. This document is also available on the Board's Internet site (*http://www.access-board.gov/prowmtg.htm*).

SUPPLEMENTARY INFORMATION: On October 20, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a notice appointing members to a Public Rights-of-Way Access Advisory Committee (Committee). 64 FR 56482 (October 20, 1999). The objectives of the Committee include providing recommendations for developing a proposed rule addressing accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968, recommendations regarding technical assistance issues, and guidance for best practices for alterations in the public rights-of-way.

On January 10, 2001, the Committee presented its recommendations on accessible public rights-of-way in a report entitled ''Building a True Community''. The report is available on the Access Board's Web site at *www.access-board.gov* or can be ordered by calling the Access Board at (800) 872–2253 (voice) or (800) 993–2822 (TTY).

At its April meeting, the technical assistance sub-committee will continue to address the development and format of technical assistance materials relating to public rights-of-way. The sub-committee meeting will be open to the public and interested persons can attend the meeting and participate on subcommittees of the Committee. All interested persons will have the opportunity to comment when the proposed accessibility guidelines for public rights-of-way are issued in the **Federal Register** by the Access Board.

Individuals who require sign language interpreters or real-time captioning systems should contact Scott Windley by March 20, 2002. Notices of future meetings will be published in the **Federal Register**.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 02–6112 Filed 3–13–02; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils from the People's Republic of China: Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty New Shipper Review of Certain Cased Pencils from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is rescinding the antidumping duty new shipper review, requested by Wuxi Andi Civilization PE Gift Give Away Co., Ltd. (Wuxi or respondent), the exporter, and Safety Touch & Javithon Inc., (Safety Touch) the importer, of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC). The period of the requested review is December 1, 2000 through May 31, 2001.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: John Conniff or Paul Stoltz, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1009 and (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2000).

Background

On December 3, 2001, counsel for the respondent notified the Department that it was withdrawing its representation. Counsel instructed the Department to direct all correspondence, questions and inquiries to Safety Touch. On January 23, 2002, the Department notified the petitioner and Safety Touch of the preliminary rescission of the instant new shipper review. On January 28, 2002, the Department published its preliminary rescission in the Federal

Register. See Certain Cased Pencils from the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Review, 67 FR 3878 (January 28, 2002). In that notice, we invited interested parties to comment on the preliminary rescission within 21 days of the date of publication of the notice. Interested parties also were notified that they may request a hearing in this review within 30 days of publication of the preliminary results.

Scope of the Review

Imports covered by this review are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks. Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Changes Since the Preliminary Results

The time limits for submitting comments and requesting a hearing have passed without the Department receiving either comments or hearing requests. We have not changed our preliminary position with respect to rescission of this review. Thus, the Department is rescinding this new shipper review.

This new shipper review and this notice are issued and published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

March 5, 2002

Bernard T. Carreau,

Deputy Assistant Secretary Import Administration, Group II.

[FR Doc. 02–6178 Filed 3–13–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Granular Polytetrafluoroethylene (PTFE) Resin from Italy: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Victoria Schepker or Constance Handley, Office 5, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–1756 or (202) 482–0631, respectively.

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 an administrative review within 245 days after the last day of the anniversary month of an order 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 the 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 publication of the preliminary results.

Background

On September 24, 2001, the Department published a notice of initiation of administrative review of the antidumping order on PTFE resin from Italy, covering the period August 1, 2000, through July 31, 2001 (66 FR 49924). The preliminary results are currently due no later than May 3, 2002.

Extension of 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, we are extending the time limit for completion of the preliminary results until no later than September 3, 2002. See Decision Memorandum from Gary Taverman to Bernard T. Carreau, dated March 7, 2002, 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 notice of preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act.

March 7, 2002

Bernard T. Carreau,

Deputy Assistant SecretaryImport Administration.

[FR Doc. 02–6177 Filed 3–13–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil: Rescission of Administrative Review of the Agreement Suspending the Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On August 20, 2001, in response to a request made by Bethlehem Steel Corporation, LTV Steel Company Inc., National Steel Corporation, and United States Steel LLC (''Domestic Producers''), the Department of Commerce (''the Department'') published in the **Federal Register** (66 FR 43570) a notice announcing the initiation of an administrative review of the agreement suspending the antidumping duty investigation on certain hot-rolled flat-rolled carbon quality steel products from Brazil. The review period is July 1, 2000 to June 30, 2001. This review has now been rescinded because Domestic Producers have withdrawn their request for review.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, 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) 482–1394.

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 references to the provisions codified at 19 CFR part 351 (2001).

Scope of the Review

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%	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 .... A1 ..... 0.01–0.07%	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/mm² and 640 N/mm² and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² 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.

Background

On July 31, 2001, Domestic Producers, as Petitioners in the suspended investigation, requested an administrative review of the agreement suspending the antidumping duty investigation on hot-rolled flat-rolled carbon quality steel from Brazil published in the **Federal Register** on July 19, 1999 (64 FR 38792). On August 20, 2001, the Department published in the **Federal Register** (66 FR 43570) a notice of ''Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part'' initiating the administrative review. On February 19, 2002, Domestic Producers withdrew their request for the review. The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. Additionally, the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. Given that we have received no submissions opposing Domestic Producers' request for withdrawal of the administrative review and the Department terminated the suspension agreement in the first administrative review of the suspension agreement, we find it reasonable to extend the time period for filing a withdrawal request. Based upon Domestic Producers' request, therefore, we are rescinding this review of the agreement suspending the antidumping duty investigation on hot-rolled flat-rolled carbon quality steel from Brazil covering the period July 1, 2000 through June 30, 2001.

This notice is issued and published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: March 6, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–6175 Filed 3–13–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain–on–Steel Cookware from Mexico: Notice of Extension of Time Limit for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, United States Department of Commerce.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor at (202) 482–4929 or (202) 482–4007, respectively, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230.

POSTPONEMENT OF FINAL RESULTS OF ADMINISTRATIVE REVIEW:

The Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on Porcelain–on–Steel Cookware from Mexico on November 13, 2001 (66 FR 56799). The current deadline for the final results in this review is March 13, 2002. In accordance with section 751(a)(3)(A) of the Tariff Act of 1930 (''the Act''), as amended, the Department finds that it is not practicable to complete this administrative review within the original time frame because it is conducting a changed–circumstances antidumping duty administrative review in which it is considering revoking the order on porcelain–on–steel cookware from Mexico and rescinding this administrative review. Thus, the Department is extending the time limit for completion of the final results until May 12, 2002, which is 180 days after the date on which notice of the preliminary results was published in the Federal Register.

March 8, 2002

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–6174 Filed 3–13–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Potassium Permanganate From the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit For Final Results of Antidumping Duty New Shipper Review.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: John Conniff at (202) 482–1009 or Chris Brady at (202) 482–4406, Office of AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a final determination within 90 days after the date on which the preliminary determination is issued. However, if the Department concludes that the case is extraordinarily complicated, it may extend the 90–day period to 150 days.

Background

On March 8, 2001, the Department published a notice of initiation of a new shipper review of the antidumping duty order on potassium permanganate from the People's Republic of China (PRC) covering the period of January 1, 2000, through December 31, 2000 (66 FR 13895). On January 3, 2002, the Department published the preliminary results of its antidumping duty new shipper review (67 FR 303). In our notice of preliminary results, we stated our intention to issue the final results of this new shipper review within 90 days from the date of the preliminary results unless the time limit is extended.

Extension of Time Limit For Final Results of Review

Based on a number of complex factual issues in the preliminary results, we have determined that additional time is needed in order to complete the final results of this review. Therefore, the Department is extending the time limit for completion of the final results until no later than May 25, 2002. *See* 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 main Commerce building.

This extension is in accordance with section 751(a)(2)(B)(iv) of the Act.

March 7, 2002

Bernard T. Carreau,

Deputy Assistant Secretaryfor Import Administration, Group II.

[FR Doc. 02–6176 Filed 3–13–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On January 17, 2002, CEMEX, S.A. de C.V. (''CEMEX'') filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Dismissal of the Request for Institution of a Section 751(b) review of the Sunset decision made by the International Trade Commission, respecting Gray Portland Cement and Clinker from Mexico. This determination was published in the **Federal Register** (66 FR 65740) on December 20, 2001. The NAFTA Secretariat has assigned Case Number USA-MEX–2002–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on January 17, 2002, requesting panel review of the Dismissal of the Request for Institution of a Section 751(b) review of the Sunset decision described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is February 18, 2002);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is March 4, 2002); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: January 22, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–6106 Filed 3–13–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Secretary of Defense's Historical Records Declassification Advisory Panel

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of the forthcoming meeting of the Historical Records Declassification Advisory Panel

(HRDAP). The purpose of this meeting is to discuss and form recommendations to the Secretary of Defense on issues involving the declassification and management of DoD classified historical documents. This is the first meeting held in 2002. The OSD Historian will chair this meeting.

DATES: Friday, March 29, 2002.

TIME: The meeting is scheduled 9 a.m. to 3 p.m.

ADDRESSES: 1777 Kent Street, Arlington (Rosslyn), VA, Room 005, 14th Floor, Penthouse Conference Area.

FOR FURTHER INFORMATION CONTACT: Ms. Chris Bromwell, Office of the Deputy Assistant Secretary of Defense (Security and Information Operations), Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence), 6000 Defense Pentagon, Washington, DC 20302–6000, telephone (703) 697–1988.

Dated: March 7, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–6116 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Intelligence in Support of War on Terrorism will meet in closed session on April 22–23, 2002; May 20–21, 2002; and June 17–18, 2002, in the Pentagon. The Task Force will identify capabilities, technologies and approaches for strengthening intelligence in support of the war against terrorism.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will address capabilities and approaches for achieving early indications and warning of terrorist capabilities and intentions, providing effective operational and tactical intelligence in support of crisis operations against terrorists, and the capability for attribution of attackers, should a terrorist event occur. The Task Force will also consider promising new capabilities facilitated by recent changes in statutes (*e.g.,* Combating Terrorism Act of 2001).

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: March 8, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 02–6115 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Special Operations and Joint Forces in Support of Countering Terrorism will meet in closed session on April 16–17, 2002, at SAIC, 4001 N. Fairfax Drive, Arlington, VA; May 13–14, 2002, at the Joint Forces Command and the Training & Doctrine Command in Hampton, VA; May 22–23, 2002, at US Central Command and US Special Operations Command in Tampa, FL; and July 16–17, 2002, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. This Task Force will review all elements of the future joint force, including Special Operation Forces that can contribute to military campaigns.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will address how to: enhance and best integrate information, maneuver and fires (kinetic and other, lethal and otherwise); deploy, sustain and protect the joint force in these missions, particularly in remote locations and in the face of counter-access measures; and, exploit and leverage the contributions of coalition partners both traditional (*e.g.*, NATO allies) and non-traditional (*e.g.*, the Afghan Northern Alliance). The Task Force will recommend steps to pursue and implement the new and enhanced operational capabilities it identifies. These steps will include initiatives for technology, systems, doctrine, organization, training, leader development, experiments and demonstrations, modeling and simulation tools and facilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these matters will be closed to the public.

Dated: March 8, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–6117 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice to alter systems of records.

SUMMARY: The Department of the Air Force is proposing to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration revises the purposes for releasing records under the routine uses.

DATES: This proposed action will be effective without further notice on April 15, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, AF-CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was

submitted on March 5, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 8, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F051 AFJA D

SYSTEM NAME:

Patent Infringement and Litigation Records (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete last sentence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry 'Air Force Instruction 51–301, Intellectual Property—Patents, Patent Related Matters, Trademarks and Copyrights.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with 'In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Patent Office to the extent such disclosures are necessary for the processing and verification of patent applications.

To the Department of Justice for the purpose of asserting and defending patent infringement action.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.'

* * * * *

STORAGE:

Delete entry and replace with 'Case files are maintained in file folders. Correspondence and other data generated by the agency may be maintained in computer files. Information from case files may be extracted and entered into a database used to store general information for management purposes.'

SAFEGUARDS:

Add to entry 'Those records in computer storage devices are protected by computer system software.'

* * * * *

F051 AFJA D

SYSTEM NAME:

Patent Infringement and Litigation Records.

SYSTEM LOCATION:

Air Force Legal Services Agency, Commercial Litigation Division (AFLSA/JACN), 1501 Wilson Blvd, Suite 606, Arlington, VA 22209–2403, and

Air Force Materiel Command, Directorate of Intellectual Property Law (AFMC LA/JAZ), 2240 B Street, Room 100, Wright-Patterson Air Force Base, OH 45433–7109.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All claimants or petitioners who have alleged unlicensed use of their patents by the Air Force or who have brought suit against the United States concerning patent, trademark or copyright matters related to the Department of the Air Force.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters; messages; forms; reports; contracts; bids; photographs; legal opinions; petitions; answers; discovery documents; memoranda; infringement studies; validity studies; procurement information; license agreements; other documents including but not limited to: Contract determinations, witness statements, and engineering and technical reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2386, Copyrights, patents, designs; 22 U.S.C. 2356, Foreign Assistance, acquisition; 28 U.S.C. 1498, Patent and copyright cases; 35 U.S.C. 183, Right to compensation; and Air Force Instruction 51–301, Intellectual Property—Patents, Patent Related Matters, Trademarks and Copyrights.

PURPOSE(S):

Purpose of the collection of information is to enable the United States and its officers and employees to investigate claims and/or defend the legal interests of the United States because of claims for compensation and litigation involving patent, trademark and copyright matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Patent Office to the extent such disclosures are necessary for the processing and verification of patent applications.

To the Department of Justice for the purpose of asserting and defending patent infringement action.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case files are maintained in file folders. Correspondence and other data generated by the agency may be maintained in computer files. Information from case files may be extracted and entered into a database used to store general information for management purposes.

RETRIEVABILITY:

Retrievable by name of claimant or litigant.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties, and who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets/safes and controlled by personnel screening. Those records in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files for three years after end of year in which the case was closed, then retired to Washington National Records Center, Washington, DC 20409, for retention up to twelve years thereafter, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Records in computer storage are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Commercial Litigation Division, Directorate of Civil Law, Air Force Legal Services Agency (AFLSA/JACN), 1501 Wilson Boulevard, Suite 606, Arlington, VA 22209–2403.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should

address written inquiries to or visit the Air Force Legal Services Agency, Directorate of Civil Law, Commercial Litigation Division (AFLSA/JACN), 1501 Wilson Boulevard, Suite 606, Arlington, VA 22209–2403.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves in this system should address written inquiries to or visit the Air Force Legal Services Agency, Directorate of Civil Law, Commercial Litigation Division (AFLSA/JACN), 1501 Wilson Blvd, Suite 606, Arlington, VA 22209–2403.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information received from the individual, contractors, other government agencies, individual corporations (non-contractors) and from source documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–6114 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 1, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before May 13, 2002.

ADDRESSES: Written comments regarding the emergency review 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 10235, 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 Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED 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 respondents, including through the use of information technology.

Dated: March 11, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of English Language Acquisition

Type of Review: Reinstatement.

Title: Application for Grants under School Improvement: Elementary School Foreign Language Incentive Program.

Abstract: This application is used by public elementary schools and local education agencies to apply for formula grants authorized under the Elementary School Foreign Language Incentive Program.

Additional Information: The Elementary School Foreign Language Incentive Program is an incentive payment program, authorized in Section 5494, Subpart 9 of Part D of Title V of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. The purpose of the Foreign Language Incentive Program is to provide incentive payments to public elementary schools that provide students attending such a school a program designed to lead to communicative competency in a foreign language.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 300

Burden Hours: 7,650.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651, *vivian.reese@ed.gov,* or should be electronically mailed to the internet address *OCIO_RIMG@ed.gov,* or should be faxed to 202–708–9346.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–6170 Filed 3–13–02; 8:45 am]

BILLING CODE 4000–01–P1

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education, Department of Education

ACTION: Notice of meeting.

SUMMARY: This notice provides the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10 (a)(2) of the Federal Advisory Committee Act. This notice is

published less than 15 days prior to the date of the meeting as a result of special administrative clearances.

DATE AND TIME: March 22, 2002, 9 a.m. to 3:30 p.m.

ADDRESSES: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036. Telephone: (202) 223–0200.

FOR FURTHER INFORMATION CONTACT: Donald Fischer, U.S. Department of Education, 1990 K Street NW., Washington, DC 20006–8544. Telephone: (202) 502–7500 or by e-mail: *donald_fischer@ed.gov* Individuals who use a telecommunication 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).

The meeting site is accessible to individuals with disabilities. Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Title VII, Part B, Section 742 of the Higher Education Amendments of 1998 (20 U.S.C. 1138a). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and procedures for grant awards.

The meeting of the National Board is open to the public. The National Board will meet on Friday, March 22, 2002, from 9 a.m. to 3:30 p.m. to discuss the Fund's programs and special initiatives.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, 8th Floor, 1990 K Street NW., Washington, DC 20006–8544 from the hours of 8 a.m. to 4:30 p.m.

Dated: March 8, 2002.

Kenneth W. Tolo,

Acting Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education.

[FR Doc. 02–6152 Filed 3–13–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–404–003]

Northern Natural Gas Company; Notice of Compliance Filing

March 8, 2002.

Take notice that on March 1, 2002, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Revised Volume No. 2, the following tariff sheets in compliance with the Commission's Order dated February 1, 2002:

Fifth Revised Volume No. 1

1st Revised 58 Revised Sheet No. 50
Substitute 59 Revised Sheet No. 50
Substitute 60 Revised Sheet No. 50
First Revised 59 Revised Sheet No. 51
Substitute 60 Revised Sheet No.51
Substitute 61 Revised Sheet No.51
1 Revised 26 Revised Sheet No. 52
Substitute 27 Revised Sheet No. 52
1 Revised 55 Revised Sheet No. 53
Substitute 56 Revised Sheet No.53
Substitute 57 Revised Sheet No. 53
1 Revised Eighth Revised Sheet No. 56
Substitute Ninth Revised Sheet No. 56
Substitute 10 Revised Sheet No. 56
1 Revised 19 Revised Sheet No. 59
1 Revised Third Revised Sheet No. 59A
First Revised 22 Revised Sheet No. 60
1 Revised Third Revised Sheet No. 60A
Ninth Revised Sheet No. 263
Fifth Revised Sheet No. 267
Sixth Revised Sheet No. 268
Original Sheet No. 268A
Second Revised Sheet No. 269A

Original Revised Volume No. 2

First Revised 166 Revised Sheet No. 1C
Substitute 167 Revised Sheet No. 1C

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6102 Filed 3–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2262–002, et al.]

Frederickson Power L.P., et al.; Electric Rate and Corporate Regulation Filings

March 7, 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. Frederickson Power L.P.

[Docket No. ER01–2262–002]

Take notice that on February 28, 2002, Frederickson Power L.P. (Frederickson Power) filed a notice of change of status and a Code of Conduct respecting Frederickson Power's pending affiliation with Duke Energy Corporation.

Comment Date: March 21, 2002.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1188–000]

Take notice that on March 1, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Ameren Energy, Inc.

A copy of this filing was sent to Ameren Energy, Inc.

Comment Date: March 22, 2002.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1189–000]

Take notice that on March 1, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System

Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Constellation Power Source, Inc.

A copy of this filing was sent to Constellation Power Source, Inc.

Comment Date: March 22, 2002.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1190–000]

Take notice that on March 1, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Consumers Energy Company d/b/a/ Consumers Energy Traders.

A copy of this filing was sent to Consumers Energy Company d/b/a/ Consumers Energy Traders.

Comment Date: March 22, 2002.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1191–000]

Take notice that on March 1, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by DTE Energy Trading, Inc.

A copy of this filing was sent to DTE Energy Trading, Inc.

Comment Date: March 22, 2002.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1192–000]

Take notice that on March 1, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Dynegy Energy Services, Inc.

A copy of this filing was sent to Dynegy Energy Services, Inc.

Comment Date: March 22, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1193–000]

Take notice that on March 1, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by El Paso Merchant Energy, L.P.

A copy of this filing was sent to El Paso Merchant Energy, L.P.

Comment Date: March 22, 2002.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1194–000]

Take notice that on March 1, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by enXco, Inc.

A copy of this filing was sent to enXco, Inc.

Comment Date: March 22, 2002.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1195–000]

Take notice that on March 1, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Minnesota Power-MPEX.

A copy of this filing was sent to Minnesota Power-MPEX.

Comment Date: March 22, 2002.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1196–000]

Take notice that on March 1, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Mirant Americas Energy Marketing, LP.

A copy of this filing was sent to Mirant Americas Energy Marketing, LP.

Comment Date: March 22, 2002.

11. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1197–000]

Take notice that on March 1, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Rainbow Energy Marketing Corporation.

A copy of this filing was sent to Rainbow Energy Marketing Corporation.

Comment Date: March 22, 2002.

12. Cinergy Services, Inc.

[Docket No. ER02–1198–000]

Take notice that on March 1, 2002, Cinergy Services, Inc. (Cinergy) and Baltimore Gas and Electric Company are requesting a cancellation of Service Agreement No.4, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.6.

Cinergy requests an effective date of March 4, 2002.

Comment Date: March 22, 2002.

13. Cinergy Services, Inc.

[Docket No. ER02–1199–000]

Take notice that on March 1, 2002, Cinergy Services, Inc. (Cinergy) and Baltimore Gas and Electric Company are requesting a cancellation of Service Agreement No.4, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.7.

Cinergy requests an effective date of March 4, 2002.

14. Cinergy Services, Inc.

[Docket No. ER02–1200–000]

Take notice that on March 1, 2002, Cinergy Services, Inc. (Cinergy) and Baltimore Gas and Electric Company are requesting a cancellation of Service Agreement No.18, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.8.

Cinergy requests an effective date of March 4, 2002.

Comment Date: March 22, 2002.

15. Cinergy Services, Inc.

[Docket No. ER02–1201–000]

Take notice that on March 1, 2002, Cinergy Services, Inc. (Cinergy) and Baltimore Gas and Electric Company are requesting a cancellation of Service Agreement No.154, under Cinergy Operating Companies, FERC Electric

Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.7.

Cinergy requests an effective date of March 4, 2002.

Comment Date: March 22, 2002.

16. Cinergy Services, Inc.

[Docket No. ER02–1202–000]

Take notice that on March 1, 2002, Cinergy Services, Inc. (Cinergy) and Baltimore Gas and Electric Company are requesting a cancellation of Service Agreement No.154, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.6.

Cinergy requests an effective date of March 4, 2002.

Comment Date: March 22, 2002.

17. Ameren Energy, Inc. on Behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–1203–000]

Take notice that on March 1, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 USC 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into *Engage Energy America LLC.* Ameren Energy seeks Commission acceptance of these service agreements effective January 1, 2002.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Comment Date: March 22, 2002.

18. Ameren Energy, Inc. on Behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–1204–000]

Take notice that on March 1, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 USC 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with *Wisconsin Electric Power Company.* Ameren Energy seeks Commission acceptance of these service agreements effective December 21, 2001.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Comment Date: March 22, 2002.

19. PJM Interconnection, L.L.C.

[Docket No. ER02–1205–000]

Take notice that on March 1, 2002, PJM Interconnection, L.L.C. (PJM), filed amendments to the PJM Open Access Transmission Tariff and the Amended and Restated PJM Operating Agreement to implement it Emergency Load Response Program on a permanent basis. Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

PJM requests an effective date of June 1, 2002 for the amendments.

Comment Date: March 22, 2002.

20. New England Power Pool

[Docket No. ER02–1206–000]

Take notice that on March 1, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials (1) to permit NEPOOL to expand its membership to include Sprague Energy Corp. (Sprague); and (2) to terminate the memberships of Niagra Mohawk Energy Inc. (NIMO) and Amerada Hess Corporation (Hess). The Participants Committee requests an effective date of March 1, 2002 for commencement of participation in NEPOOL by Sprague and December 31, 2001 and February 1, 2002 for the terminations of NIMO and Hess, respectively.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: March 22, 2002.

21. New England Power Pool

[Docket No. ER02–1207–000]

Take notice that on March 1, 2001, the New England Power Pool (NEPOOL) Participants Committee tendered for filing a Service Agreement for Regional Network Service, including Network Integration Transmission Service pursuant to section 205 of the Federal Power Act and 18 CFR35.12 of the Commission's regulations. Acceptance of this Service Agreement will recognize the provision of Regional Network Service to Miller Hydro Group, in accordance with the provisions of the Restated NEPOOL Open Access Transmission Tariff, as amended and supplemented. An effective date of February 1, 2002 for commencement of transmission service has been requested.

Copies of this filing were sent to the NEPOOL Participants, the New England state governors and regulatory commissions, and all parties to the transaction.

Comment Date: March 22, 2002.

22. New England Power Company

[Docket No. ER02–1208–000]

Take notice that on March 1, 2002, New England Power Company (NEP) tendered for filing the Original Service Agreement No. 210 for Network Integration Transmission Service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and Millennium Power Partners, L.P., the First Revised Service Agreement No. 109 for Network Integration Transmission Service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and Massachusetts Electric Company and Nantucket Electric Company; the First Revised Service Agreement No. 108 for Network Integration Transmission Service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and The Narragansett Electric Company; and the First Revised Service Agreement No. 116 for Network Integration Transmission Service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and USGen New England, Inc. (USGen).

NEP states that this filing has been served upon USGen and regulators in the Commonwealth of Massachusetts and the State of Rhode Island.

Comment Date: March 22, 2002.

23. American Electric Power Service Corporation

[Docket No. ER02–1209–000]

Take notice that on March 1, 2002, Central Power and Light Company (CPL) and American Electric Power Service Corporation (AEPSC), as designated agent for Central Power and Light Company, submitted for filing (1) a service agreement (the OATT Service Agreement) under which Pedernales Electric Cooperative, Inc. (Pedernales) will take transmission service pursuant to Part IV of the Open Access Transmission Tariff of the American Electric Power System (AEP OATT); and (2) an Interconnection Agreement (IA) between CPL and Pedernales, implementing new arrangements attendant to converting the former Pedernales Points of Delivery on CPL to Points of Interconnection with CPL.

CPL and AEPSC seek an effective date of February 1, 2002 for the two agreements and, accordingly, seek waiver of the Commission's notice requirements. Copies of the filing have been served on Pedernales and on the Public Utility Commission of Texas.

Comment Date: March 22, 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. 02–6100 Filed 3–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–54–000, et al.]

The New Power Company, et al.; Electric Rate and Corporate Regulation Filings

March 4, 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. The New Power Company, NewPower Holdings, Inc., Centrica plc

[Docket No. EC02–54–000]

Take notice that on February 28, 2002, The New Power Company, its parent company NewPower Holdings, Inc. and Centrica plc, filed with the Federal Energy Regulatory Commission (Commission) a joint application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Centrica plc will indirectly acquire NewPower Holdings, Inc. Applicants request confidential treatment of Exhibit I, pursuant to 18 CFR 388.112 of the Commission's regulations, for the written instruments associated with the proposed disposition. Further, Applicants respectfully request that the Commission approve this application on an expedited basis by March 27, 2002.

Comment Date: March 21, 2002.

2. Shanghai WEI-Gang Energy Company Ltd.

[Docket No. EG02–70–000]

Take notice that on February 19, 2002, Shanghai WEI-Gang Energy Company Ltd. (Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amended application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935. The applicant states that it is a Sino-foreign cooperative joint venture that is engaged directly and exclusively in developing, owning, and operating a gas-fired 50 MW simple cycle power plant in Shanghai, China, which will be an eligible facility.

Comment Date: March 25, 2002.

3. American Transmission Company LLC

[Docket No. ER02–529–001]

Take notice that on February 27, 2002, American Transmission Company LLC (ATCLLC) tendered for filing, in compliance with the Federal Energy Regulatory Commission's (Commission) January 30, 2002 order, a Revised Generation-Transmission Interconnection Agreement with Cloverland Electric Cooperative, which is designated as Revised Service Agreement No. 220. ATCLLC requests an effective date of June 29, 2001.

Comment Date: March 20, 2002.

4. RAMCO, Inc.

[Docket No. ER01–1916–001]

Take notice that on February 28, 2002, RAMCO, Inc. (RAMCO) filed a Notice of Change in Status with the Federal Energy Regulatory Commission (Commission) in accordance with the delegated letter order issued June 26, 2001 in RAMCO, Inc., Docket No. ER01–1916–000, accepting for filing RAMCO's marked-based rate tariff. The Notice of Change in Status reports that PG&E Dispersed Power Corporation will purchase 100% of the ownership shares of RAMCO. *Comment Date:* March 21, 2002.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1164–000]

Take notice that on February 28, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Dayton Power and Light Company—DP&L Power Services.

A copy of this filing was sent to Dayton Power and Light Company—DP&L Power Services.

Comment Date: March 21, 2002.

6. Connexus Energy

[Docket No. ER02–1165–000]

Take notice that on February 28, 2002, Connexus Energy submitted for filing with the Federal Energy Regulatory Commission (Commission) revised sheets to Connexus Energy's Electric Rate Schedule FERC No. 1. Connexus Energy states that the revised sheets effect minor rate changes under Connexus Energy's contract with Elk River Municipal Utilities.

Connexus Energy requests waiver of the Commission's notice requirement to allow a March 1, 2002 effective date.

Comment Date: March 21, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1167–000]

Take notice that on February 28, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Indianapolis Power & Light Company.

A copy of this filing was sent to Indianapolis Power & Light Company.

Comment Date: March 21, 2002.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1168–000]

Take notice that on February 28, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the

Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by New Power Company.

A copy of this filing was sent to New Power Company.

Comment Date: March 21, 2002.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1169–000]

Take notice that on February 28, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Western Area Power Administration-UGP Marketing.

A copy of this filing was sent to Western Area Power Administration-UGP Marketing.

Comment Date: March 21, 2002.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1170–000]

Take notice that on February 28, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Minnkota Power Cooperative.

A copy of this filing was sent to Minnkota Power Cooperative.

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. 02–6101 Filed 3–13–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7157–6]

Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the North American Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is inviting nominations of qualified candidates to be considered for appointment to fill vacancies on the National and Governmental Advisory Committees to the U.S. Representative to the North American Commission for Environmental Cooperation. Current vacancies on these committees are scheduled to be filled by May 1, 2002.

ADDRESSES: Submit nominations to: Mark Joyce, Designated Federal Officer, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601A), 1200 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Officer, U.S. Environmental Protection Agency (1601A), 1200 Pennsylvania Avenue NW., Washington, DC 20004; telephone 202–564–9802; fax 202–501–0661; e-mail *joyce.mark@epa.gov.*

SUPPLEMENTARY INFORMATION: The National and Governmental Advisory Committees advise the Administrator of the EPA in the Administrator's capacity as the U.S. Representative to the Council of the North American Commission for Environmental Cooperation (CEC). The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement (NAFTA) Implementation Act, Public Law 103–182 and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The Committees are responsible for providing advice to the United States Representative on a wide range of strategic, scientific, technological, regulatory and economic issues related to implementation and further elaboration of the NAAEC. The National Advisory Committee consists of 12 representatives of environmental groups and non-profit entities, business and industry, and educational institutions. The Governmental Advisory Committee consists of 12 representatives from state, local and tribal governments.

Members are appointed by the Administrator of EPA for a two year term with the possibility of reappointment. The Committees usually meet 3 times annually and the average workload for Committee members is approximately 10 to 15 hours per month. Members serve on the Committees in a voluntary capacity, but EPA does provide reimbursement for travel expenses associated with official government business.

The following criteria will be used to evaluate nominees:

- They have extensive professional knowledge of the subjects the Committees examine, including trade and the environment, the NAFTA, the NAAEC, and the CEC.
- They represent a sector or group that is involved in the issues the Committees evaluate.
- They have senior level experience that will fill a need on the Committees for their particular expertise.
- They have a demonstrated ability to work in a consensus building process with a wide range of representatives from diverse constituencies.

Nominees will also be considered with regard to the mandates of the Federal Advisory Committee Act that require the Committees to maintain diversity across a broad range of constituencies, sectors, and groups.

Nominations for membership must include a resume describing the professional and educational qualifications of the nominee and the nominee's current business address and daytime telephone number.

Dated: March 1, 2002.

Mark N. Joyce,

Designated Federal Officer.

[FR Doc. 02–6154 Filed 3–13–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30523; FRL–6826–4]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30523, must be received on or before April 15, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30523 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By Mail: Mary L. Waller, Product Manager (PM 21), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354 and e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112	Crop production Animal production
	311 32532	Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–30523. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30523 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30523. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record.

Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 432–REER. *Applicant*: Aventis Environmental Science USA LP, 95 Chestnut Ridge Road, Monvale, NJ 07645. *Product name*: Triticonazole Technical Fungicide. *Active ingredient*: Triticonazole [(5-[(4-chlorophenyl) methylene]-2,2-dimethyl-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol at 92.5%. *Proposed classification/Use*: None. For formulation of fungicides only for turf and ornamentals.

2. *File Symbol*: 264–ANG. *Applicant*: Aventis Crop Science, 2TW Alexandria Drive, Research Triangle Park, NC 27709. *Product name*: CHARTER Triticonazole Fungicide. *Active ingredient*: Triticonazole at 2.4%. *Proposed classification/Use*: None. For control of various seed-borne diseases in wheat, barley, and oats.

3. *File Symbol*: 264–ANR. *Applicant*: Aventis Crop Science. *Product name*: Chipco(R) Brand Triton(TM) Fungicide. *Active ingredient*: Triticonazole at 19.3%. *Proposed classification/Use*: None. For the prevention and control of certain diseases of commercial turfgrass, golf courses, and sod farms.

4. *File Symbol*: 264–ATE. *Applicant*: Aventis Crop Science. *Product name*: CHARTER(TM) Brand PB Fungicide. *Active ingredient*: Triticonazole at 1.25%. *Proposed classification/Use*: None. For control of various seed-borne diseases in wheat and barley.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: February 28, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–6157 Filed 3–13–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1071; FRL–6825–1]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1071, must be received on or before April 15, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1071 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Fungicide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'', and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–1071. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business

information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1071 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1071. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 28, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by Aventis CropScience, and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Aventis CropScience

PP 9F6051

EPA has received a pesticide petition (9F6051) from Aventis CropScience, 2 TW Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing tolerances for combined residues of the fungicide triticonazole 5-[(4-chlorophenyl)methylene]-2,2-dimethyl-1-(1H-1,2,4-triazol-1-ylmethyl)cyclopentanol), and its metabolites, 5-[(4-chlorophenyl)methylene]-2-hydroxymethyl-2-methyl-1-(1H-1,2,4-triazol- 1ylmethyl)cyclopentanol (RPA 404886) and 5-[(4-chlorophenyl)methylene]-2,2-dimethyl-1-(1H- 1,2,4-triazol-1ylmethyl)cyclopentan-1,3-trans-diol (RPA 406341)] in or on the raw agricultural commodities wheat grain at 0.05 parts per million (ppm), wheat forage at 0.05 ppm, wheat hay at 0.05 ppm, wheat straw at 0.05 ppm, barley grain at 0.05 ppm, barley forage at 0.05 ppm, barley hay at 0.05 ppm, and barley straw at 0.05 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Metabolism studies in wheat and barley were conducted using both phenyl-ring and triazole-ring labeled material in order to fully define the metabolic fate of triticonazole. Treatment regimes were chosen to simulate a commercial seed treatment application. The results from both crops were similar. Hydroxylation is the primary route of metabolism with the carbons of the cyclopentane ring and the methyl groups being the sites susceptible to oxidative degradation.

2. *Analytical method.* The plant metabolism studies indicated that analysis for the parent compound, triticonazole, and the metabolites RPA 404886 and RPA 406341 was sufficient to enable the assessment of the relevant residues in wheat and barley. Following extraction of the crop matrix and sample cleanup, the analytical enforcement method relies on the use of Turbo Ionspray, liquid chromatography/mass spectroscopy (LC/MS) for determination of the residue level. This method allows detection and measurement of residues in or on agricultural commodities at or above the proposed tolerance level. Analysis using Electrospray, liquid chromatography/ mass spectroscopy/ mass spectroscopy (LC/MS/MS) is more sensitive, and allows quantitation of analytes down to 0.005 ppm.

3. *Magnitude of residues.* Field residue trials were conducted across the major regions of small-grain cereal production in the United States. The treatment regime was selected to represent the use pattern that is the most likely to result in the highest residues.

Trials to define the magnitude of the residues in wheat raw agricultural commodity, were conducted at 22 trial sites of which 13 used spring wheat varieties and 9 used fall wheat varieties. The wheat seeds were treated with a triticonazole formulation at a rate of approximately 10 g active ingredient (a.i.)/100 kg wheat seed, a rate twice that anticipated under commercial use practice. Generally, the level of triticonazole residues observed in the samples were very low. For wheat forage, the residue of triticonazole found in or on the samples did not exceed 0.02 ppm; whereas, the residues for wheat hay did not exceed 0.008 ppm and the residues for wheat straw did not exceed 0.007 ppm. Triticonazole was not detected (method detection limit (MDL) = 0.002 ppm) in or on the wheat grain samples, except in one of the two replicate samples from one trial site where the residue level was determined to be 0.0055 ppm. Residues of the metabolites were not detected (MDL = 0.002 ppm) in any forage, hay grain or straw samples, except at one site where residues of RPA 406341 in the straw were just above the MDL but less than the limit of quantification (LOQ) of the method.

Trials to define the magnitude of the residues in the raw agricultural commodity barley were conducted at 14 trial sites of which 12 used spring wheat varieties and 2 used fall wheat varieties. The barley seeds were treated as described above for wheat. No residues of triticonazole or metabolites were detected (MDL = 0.002 ppm) in or on the barley grain samples. In the barley hay samples, no residues of triticonazole or metabolites were detected above the LOQ of the method (0.005 ppm), except at one site where the mean level of triticonazole in the duplicate samples was 0.0058 ppm. Similarly, in the straw, no residues of triticonazole or metabolites were detected above the LOQ of the method except in one replicate at one site where triticonazole was found at 0.0067 ppm.

Studies were conducted to determine if triticonazole residues concentrated upon processing wheat or barley grain. The wheat or barley seeds used for these studies were treated at a nominal rate of 50 g a.i./100kg wheat seed, a rate 10 times that anticipated under commercial use practice. Grain samples were collected at normal commercial maturity. Using procedures that simulate commercial practices, wheat grain was processed into bran, flour, middlings, shorts, and germ; whereas barley grain was processed into bran, flour, or pearled barley. Using LC/MS/MS, the LOQ and MDL for triticonazole and metabolites were 0.005 ppm and 0.002 ppm, respectively, for all matrices. Triticonazole-related residues were below the MDL for all grain and processed fraction samples. Based on these results, residues of triticonazole and metabolites do not concentrate in wheat or barley processed fractions following a triticonazole seed treatment application.

B. Toxicological Profile

1. *Acute toxicity.* Triticonazole is of low acute toxicity placing the active ingredient in Toxicity Category III and IV. Triticonazole is non-irritating to the eyes and skin and is not a skin sensitizer.

2. *Genotoxicty.* The genetic toxicity of triticonazole has been evaluated through a full battery of mutagenicity assays. Triticonazole was not mutagenic or genotoxic in any assay in either the presence or absence of metabolic activation.

3. *Reproductive and developmental toxicity.* Triticonazole is not a reproductive or developmental toxicant.

a. *Teratology - rat.* Groups of at least 23 pregnant rats received daily oral doses of 0, 40, 200 or 1,000 mg/kg/day of triticonazole from day 6 to day 15 of gestation inclusive. The mean weight gain and the food intake of females receiving 1,000 mg/kg/day was marginally lower than that of the controls. Litter size, survival *in utero* and mean fetal and placental weights were unaffected by treatment. There were no major abnormalities or visceral abnormalities at any dosage used. The mean weight gain and the food intake of females receiving 1,000 mg/kg/day was marginally lower than that of the controls. Females at 40 and 200 mg/kg/day were unaffected.

There was an apparent increase in the incidence of fetuses with an additional 14th rib or pair of ribs at 1,000 mg/kg/day. The incidences at 40 and 200 mg/kg/day were within the historical control range. Because the increased incidence of supernumerary (14th) ribs is not toxicologically significant, the NOAEL for maternal and developmental toxicity was 1,000 mg/kg/day.

b. *Teratology - rabbit.* Triticonazole was administered by gavage to 4 groups of at least 18 pregnant New Zealand white rabbits at dosages of 5, 25, 50 or 75 mg/kg/day, from Day 6 to Day 19 of gestation inclusive. Administration of 25 mg/kg/day was associated with body weight reduction and reduced food intake. At 50 and 75 mg/kg/day more marked body weight loss, reduced food intake and deaths were observed. Slightly increased pre-implantation and post-implantation losses and increased incidences of skeletal anomalies were observed at 75 mg/kg, secondary to severe maternal toxicity (6 animals died out of 20). The NOAEL for maternal toxicity was 25 milligrams/kilogram of body weight/day (mg/kg bwt/day) based on reduced body weight gains and food consumption at 50 mg/kg bwt/day. The NOAEL for fetal development was 50 mg/kg bwt/day, based on skeletal abnormalities noted in the presence of severe maternal toxicity at 75 mg/kg bwt/day.

c. *Two-generation reproduction - rat.* Groups of 28 males and 28 females Crl:CD BR/VAF/Plus rats (F0) were offered diets containing 0, 5, 25, 750 and 5,000 ppm of triticonazole for 10 weeks before mating and throughout gestation, lactation and weaning of the pups. A second generation of selected pups (F1) was provided diets at the same concentrations as their parents from weaning for at least 10 weeks before mating and throughout mating,

gestation and lactation. The NOAEL for systemic toxicity is 750 ppm, based on mortality, decreased body weight gain, and food consumption seen in the high dose animals in both generations. The NOAEL for reproductive performance and fetal effects is also 750 ppm, based on a reduction in mating and fertility indices, number of live births, pup viability and pup body weights at 5,000 ppm.

4. *Subchronic toxicity*—i. 28-day *dietary - rat.* Groups of five male and five female F–344 rats received triticonazole continuously, via the diet, at concentrations of 0, 500, 1,500, 5,000, 15,000 or 50,000 ppm (0, 50, 150, 500, 1,500, and 5,000 mg/kg/day, respectively for 4–weeks. At 5,000 ppm (500 mg/kg/day) growth performance, food consumption and efficiency of food utilization of males were inferior to control values throughout the treatment period. Hematological investigations revealed low platelet counts in males. Blood chemistry investigations revealed minimally low glucose concentrations. High liver weights and low prostate and uterus weights were noted at necropsy. The NOAEL for systemic toxicity was 1,500 ppm (150 mg/kg/day).

ii. *90–day dietary - rat.* Four groups of 10 male and 10 female CD rats received triticonazole via the diet at concentrations of 25, 250, 12,500 or 25,000 ppm (2.5, 25, 1,250, or 2,500 mg/kg/day) for 13 weeks. The NOAEL for this study was 12,500 ppm (1,250 mg/kg/day) based on reduced body weight gain, food consumption, and histopathological changes in the liver and adrenals.

c. *Dermal toxicity evaluation.* No adverse effects were noted in rats at the limit dose of 1,000 mg/kg bwt/day.

5. *Chronic toxicity - dog.* a. Four groups of 4 male and 4 female beagle dogs received triticonazole in gelatin capsules at dosages 2.5, 25 and 150 mg/kg/day. A similar control group received only empty gelatin capsules. The NOAEL for this study was 25 mg/kg bwt/day based on clinical signs of toxicity, lower for body weight gains; organ weight changes and histopathological changes of the liver and adrenals were seen at the LOAEL of 150 mg/kg/day.

b. *Combined chronic toxicity/oncogenicity - rat.* Four groups of 50 males and 50 females CD rats were administered triticonazole via the diet at concentrations of 5, 25, 750 and 5,000 ppm for 2–years. Observed adverse effects were only at the highest dose of 5,000 ppm with decreased body weight gain in females and histopathological changes in the adrenals. The NOAEL for this study was 750 ppm that is equivalent to 29.4 and 38.3 mg/kg/day respectively for males and females.

c. *Oncogenicity - mouse.* Triticonazole was administered via the diet to four groups of 52 male and 52 female CD mice at concentrations of 0, 15, 150 and 1,500 ppm for 78 weeks. The NOAEL was 150 ppm (17.4 and 20.1 mg/kg for males and females respectively) based on reductions in body weight gain, increased relative and absolute liver weights and histopathological changes in the liver at 1,500 ppm. There were no treatment-related neoplasms in this study.

6. *Neurotoxicity*—a. *Acute neurotoxicity.* Groups of 10 male and 10 female rats were dosed once by oral gavage at dose levels of 0, 80, 400, or 2,000 mg/kg of triticonazole in a methyl cellulose suspension. There were no differences observed in body weight, in any of the functional observation battery (FOB), or in motor activity. Microscopy revealed no changes related to the administration of triticonazole. Therefore, the NOAEL for acute neurotoxicity exceeds 2,000 mg/kg.

b. *Subchronic neurotoxicity.* Groups of 10 male and 10 female rats received basal diet containing triticonazole at inclusion levels of 0, 500, 2,500 or 10,000 ppm (0, 33, 170 and 695 mg/kg/day in the males, and 0, 39, 199 and 820 mg/kg/day in the females). There were no differences observed in bodyweight, in any of the FOB, or in motor activity. Microscopy revealed no changes related to the administration of triticonazole. Therefore, the NOAEL for sub-acute neurotoxicity exceeds 10,000 ppm (exceeds 695 mg/kg/day) in the rat.

7. *Animal metabolism.* Studies conducted in cows and hens using ^{14}C-triticonazole indicate the majority of the radioactivity is rapidly excreted with almost a negligible amount transferred to tissues, milk or eggs. Hyrdoxylation represented the primary metabolic pathway with the carbon atoms on the cyclopentane and those of the methyl groups being the sites of attack. Principal metabolites included RPA 406341 and RPA 404886 and a metabolite in which the hydroxymethyl group of RPA 404886 was further oxidized to a carboxylic acid function.

8. *Endocrine disruption.* No studies have been conducted to investigate the potential of triticonazole to induce estrogenic or other endocrine effects. The EPA has not yet developed the criteria it will use for characterizing endocrine disrupting substances. Therefore, an evaluation of the potential of triticonazole to induce estrogenic or other endocrine effects cannot be conducted at this time.

C. Aggregate Exposure

1. *Dietary exposure.* Tolerances are proposed under 40 CFR part 180 for the combined residues of triticonazole and metabolites in or on wheat grain, forage, straw, and hay, and in or on barley grain, forage, straw, and hay. The registration of triticonazole for control of fungal diseases in turf (non-food use) is pending at EPA. The turf use is for application by professional applicators, and does not include use on residential turf. Therefore, potential non-occupational (residential) exposure would include exposures resulting from consumption of potential residues in food and water only.

i. *Food.* Potential dietary exposures from food were estimated using the DEEM software system (Novigen Sciences, Inc.) and the 1994–96 USDA consumption data. Residue data from field trial studies in which grain grown from triticonazole treated barley and wheat seed was used to estimate chronic and acute dietary exposure. Percent crop treated values include the total amount of barley and wheat treated with any seed treatment pesticide, and thus, are conservative. Metabolism studies show that triticonazole residues are not expected in livestock tissues from animals fed at levels found in treated seed feed items. Tier 3 chronic exposure for the overall U.S. population was estimated to be 0.000002 mg/kg/bwt/day, representing less than 0.1% of the chronic reference dose. Chronic exposure for the most highly exposed population subgroup, children 1–6 years of age, was calculated to be 0.000004 mg/kg/bwt/day, also less than 0.1% of the chronic reference dose.

Tier 3 acute exposure at the 99.9th percentile for the overall U.S. population was estimated to be 0.000017 mg/kg/bwt/day, less than 0.1% of the acute reference dose. Acute exposure for the most highly exposed population subgroup, again children 1–6 years old, was estimated to be 0.00002 mg/kg/bwt/day, less than 0.1% of the acute reference dose. These analyses represent worst case estimates of potential dietary exposure to wheat and barley. Any exposure from residues of triticonazole in the diet are likely to be negligible to non-existent in real world situations.

ii. *Drinking water.* EPA's standard operating procedure (SOP) for drinking water exposure and risk assessments was used to perform the drinking water assessment. This SOP uses a variety of tools to conduct drinking water assessment. These tools include water models such as screening concentration in ground water (SCI-GROW), generic

expected environmental concentration (GENEEC), pesticide root zone management system/exposure analysis modeling system (PRZMS/EXAMS), and monitoring data. If monitoring data are not available, then the models are used to predict potential residues in surface and ground water, and the highest residue is assumed to be the drinking water residue. In the case of triticonazole, monitoring data do not exist; therefore, GENEEC was used to estimate the concentration of triticonazole that might occur in water. The GENEEC values represent very conservative assumptions and worst case scenarios. The calculated drinking water levels of comparison (DWLOC), for chronic and acute exposures for all adults and children exceed the drinking water estimated concentrations (DWECs) from the models by many orders of magnitude. The acute DWLOC for children is 2,500 parts per billion (ppb). The acute DWEC is 0.098 ppb. The chronic DWLOC for adults is 5,950 ppb. The chronic DWLOC for children/toddlers is 1,700 ppb. The DWEC for the worst case chronic scenario is 0.024 ppb. The drinking water levels of comparison are based on highly conservative dietary (food) exposures and are expected to be even higher in real world situations. Any exposure from triticonazole in drinking water would be negligible based on these highly conservative analyses.

2. *Non-dietary exposure.* The pending CHIPCO brand TRITON registration for triticonazole is for commercial turf grass, golf courses and sod farms. It is not intended for home use. As such, there would be no exposure in residential homes from this use, and is not included in the aggregate risk assessment.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'', concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' There is no reliable data at this time to determine whether triticonazole has a common mechanism of toxicity with other substances, or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, triticonazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance petition, therefore, it has not been assumed that triticonazole has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Using the conservative assumptions described above, based on the completeness and reliability of the toxicity data, it is concluded that chronic dietary exposure to the proposed uses of triticonazole will utilize less than 0.1% of the chronic reference dose for the U.S. population. The actual exposure is likely to be much less as more realistic data and models are developed. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or, below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. Acute exposure estimates for the U.S. population utilizes less than 0.1% of the acute RfD. This is a conservative assessment and actual exposure is likely to be far less. Drinking water levels of comparison based on the dietary exposure are much greater than highly conservative estimated levels, and would be expected to be well below the 100% level of the RfD, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure (food and drinking water) residues of triticonazole.

2. *Infants and children.* FFDCA Section 408 provides that the Agency may apply an additional safety factor for infants and children to account for pre-natal and post-natal toxicity or incompleteness of the data base. The toxicology data base for triticonazole regarding potential pre-natal and post-natal effects in children is complete according to existing Agency data requirements and does not indicate any particular developmental or reproductive concerns. The developmental toxicity studies clearly demonstrate that triticonazole is not teratogenic and the reproductive toxicity study did not indicate any increased sensitivity to the effects of triticonazole in developing, or young animals. Therefore, an extra safety factor is not warranted.

Using the conservative assumptions described in the exposure section above, exposure to residues of triticonazole in food for children 1–6 years old, (the most highly exposed sub group) is less than 0.1% of the acute and chronic reference doses. As in the adult situation, drinking water levels of comparison are much higher than the worst case drinking water estimated concentrations, and are expected to use well below 100% of the reference dose, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of triticonazole.

F. International Tolerances

Maximum residue limits codex MRLs for triticonazole and metabolites in or on wheat and barley commodities have not been established by the Codex Alimentarius Commission.

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BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1074; FRL–6826–3]

Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–1074, must be received on or before April 15, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1074 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (703) 308–3194; and e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–1074. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1074 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1074. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the FFDCA, 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 28, 2002.

Peter Caulkins,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represent

the views of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Interregional Research Project Number 4

PP 6E4636

EPA has received pesticide petition (6E4636) from the Interregional Research Project Number 4 (IR–4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180.142 by establishing a tolerance for residues of the herbicide, plant regulator, and fungicide 2,4–D (2,4-dichlorophenoxyacetic) in or on the raw agricultural commodity wild rice at 0.1 parts per million (ppm). This notice includes a summary of the petition prepared by Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residue of 2,4–D is adequately understood. The regulable residue is 2,4–D *per se*, as established in 40 CFR 180.142. No livestock feed issues are raised by this action.

2. *Analytical method*. EN-CAS Method ENC gas liquid chromatograhy/electron capture detector (GLC/ECD), which has underdone successful independent laboratory validation is available for enforcement.

3. *Magnitude of residues*. One field trial (Minnesota) with 2 treatment rates was conducted. 2,4–D was applied by hand-held sprayer at 0X, 1X, and 2X the proposed label rate. The preharvest interval (PHI) was 53–64 days. Samples of grain and hulls were analyzed with 22½ months of harvest. No detectable residues (<0.05 ppm) of 2,4–D were reported.

B. Toxicological Profile

The nature of the toxic effects caused by 2,4–D are discussed in Unit II.B. of the **Federal Register** of October 24, 2001, (66 FR 53791) (FRL–6802–5).

C. Aggregate Exposure

The aggregate exposure (food, drinking water, and residential) assessment for 2,4–D is discussed in Unit II.C. of the **Federal Register** of October 24, 2001. The dietary exposure assessment includes a time-limited tolerance for wild rice at 0.1 ppm which was established in support of a section 18 emergency exemption.

D. Cumulative Effects

The potential for cumulative effects for 2,4–D and other substances with a common mechanism of toxicity is discussed in Unit II.D. of the **Federal Register** of October 24, 2001.

E. Safety Determination

The safety determination for the U.S. population, infants, and children for 2,4–D is discussed in Unit II.E. of the **Federal Register** of October 24, 2001.

F. International Tolerances

There are no Codex, Canadian, or Mexican maximum residue limits for use of 2,4–D on wild rice. Therefore, international harmonization is not an issue for this commodity.

2. Interregional Research Project Number 4

PP 1E6325

EPA has received pesticide petition (1E6325) from the Interregional Research Project Number 4 (IR–4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180.448 by establishing a tolerance for residues of the miticide, hexythiazox, trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide and its metabolites containing the (4-chlorophenyl-4-methyl-2-oxo-3-thiazolidine moiety in or on the raw agricultural commodity date at 1.0 ppm. This notice includes a summary of the petition prepared by Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of hexythiazox as well as the nature of the residues in plants is adequately understood for purposes of this tolerance. The residue of concern is hexythiazox and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety as specified in 40 CFR 180.448.

2. *Analytical method*. Adequate methods to enforce the tolerance expression have been submitted for publication in Pesticide Analytical Manual (PAM) II. The approved method is designated as AMR 985–87 which has been used in a variety of commodities. The method involves separation by high performance liquid chromotography (HPLC) followed by ultraviolet (UV) detection at 225 nm.

3. *Magnitude of residues*. Three field trials (06957.99–CA82, CA83, and CA84) were conducted in Coachella, California. No detectable residues of hexythiazox were found in the untreated date samples. The treated samples from trial CA82 had residues of 0.07 ppm and 0.26 ppm. The treated samples from trial CA83 had residues of 0.09 ppm and 0.11 ppm. The treated samples from trial CA84 had residues of 0.30 ppm and 0.63 ppm. Based on available data, the proposed use, one application of hexythiazox at the rate of 6 oz. (0.1875 lb active) per acre, minimum 90 day PHI should be reported.

B. Toxicological Profile

The nature of the toxic effects caused by hexythiazox are discussed in Unit II.B. of the **Federal Register** of December 28, 2000 (65 FR 82349) (FRL–6761–6).

C. Aggregate Exposure

The aggregate exposure (food, drinking water, and residential) assessment for hexythiazox is discussed in Unit II.C. of the **Federal Register** of December 28, 2000. Dates were included in this risk assessment in connection with a section 18 emergency exemption. A time-limited tolerance has been established at 1.0 ppm and is currently set to expire on October 31, 2002.

D. Cumulative Effects

The potential for cumulative effects caused by hexythiazox and other substances with a common mechanism of toxicity is discussed in Unit II.D. of the **Federal Register** of December 28, 2000.

E. Safety Determination

The safety determination for hexythiazox is discussed in Unit II.E. of the **Federal Register** of December 28, 2000.

F. International Tolerances

There are no CODEX, Canadian, or Mexican maximum residue limits for hexythiazox on dates.

[FR Doc. 02–6158 Filed 3–13–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7157–8]

Developing EPA Information Quality Guidelines Pursuant to OMB Information Quality Guidelines Under Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Public Law 106–554; HR 5658)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) will hold an Online Public Comment Session between March 19, 2002, and March 22, 2002, to give early opportunity to comment on areas to be considered as EPA develops Information Quality Guidelines pursuant to Office of Management and Budget Final Guidelines issued on February 22, 2002 (67 FR 8452–8460). EPA will post a request for public input on March 19 and comments will be accepted until midnight EST March 22, 2002. The time frame for this comment opportunity is brief due to the accelerated schedule for finalizing the Guidelines. The Public's comments will help inform and shape the direction EPA will take in developing the Guidelines. Instructions for providing your comments will be available online as of March 19, 2002. In addition to this online comment opportunity, EPA will make its draft Guidelines available for public comment and hold a Public Meeting on the Information Quality Guidelines in May 2002 in Washington, DC. Additional details about the Public Meeting will be posted on the EPA Office of Environmental Information website as soon as they become available.

DATES: The Online Public Comment Session will be held March 19–22, 2002.

ADDRESSES: The Online Public Comment Session will be accessible via the Internet at *www.epa.gov/oei.*

FOR FURTHER INFORMATION CONTACT: Evangeline Tsibris Cummings, Environmental Protection Agency, Office of Environmental Information, Office of Information Analysis and Access; telephone: 202–260–1655; e-mail: *cummings.evangeline@epa.gov*

Dated: March 7, 2002.

Elaine Stanley,

Director, Office of Information Analysis and Access, Office of Environmental Information.

[FR Doc. 02–6155 Filed 3–13–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA–02–502]

Eighth Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–03 Advisory Committee will be held on April 4, 2002, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: April 4, 2002; 2 p.m.–4 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Planning and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the eighth meeting of the WRC–03 Advisory Committee.

The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the eighth meeting is as follows:

Agenda

Eighth Meeting of the WRC–03 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

April 4, 2002; 2 p.m.–4 p.m.

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Seventh Meeting
4. Status of Preliminary Views and Proposals
5. Reports from regional WRC–03 Preparatory Meetings
6. NTIA Draft Preliminary Views and Proposals
7. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
8. Future Meetings
9. Other Business

Federal Communications Commission.

Don Abelson,

Chief, International Bureau.

[FR Doc. 02–6111 Filed 3–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 2002.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. The Royal Bank of Scotland Group PLC, Edinburgh, Scotland, United Kingdom; to engage *de novo* through its subsidiary, Identrus, LLC, New York, New York, in certain data processing activities, pursuant to § 225.28(b)(14), of Regulation Y. See also The Royal Bank of Canada, 82 Fed. Res. Bull. 363 (1996) (the ''First Integrion Order'') and the Royal Bank of Canada, 83 Fed. Res. Bull. 135 (1997) (the ''Second Integrion Order''; and together with the First Integrion Order, the ''Integrion Orders''). See also, Cardinal Bancshares, Inc., 82 Fed. Res. Bull. 674 (1996) (permitting bank holding company to provide data processing and transmission services to unaffiliated institutions to assist those institutions in offering banking and financial services to their customers over the internet); Toronto-Dominion Bank, 83 Fed. Res. Bull. 335 (1997) (permitting bank holding company to provide computer software to broker-dealers and other financial institutions to permit those institutions to execute purchases and sales of securities for their customers).

B. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Barclays PLC and Barclays Bank PLC, both of London, England; to engage *de novo* through its subsidiary, Identrus, LLC, New York, New York, in certain data processing activities, pursuant to Sec. 225.28(b)(14), of Regulation Y. See also The Royal Bank of Canada, 82 Fed. Res. Bull. 363 (1996) (the ''First Integrion Order'') and the Royal Bank of Canada, 83 Fed. Res. Bull. 135 (1997) (the ''Second Integrion Order: and together with the First Integrion Order, the ''Integrion Orders''). See also, Cardinal Bancshares, Inc., 82 Fed. Res. Bull. 674 (1996) (permitting bank holding company to provide data processing and transmission services to unaffiliated institutions to assist those institutions in offering banking and financial services to their customers over the internet); Toronto-Dominion Bank, 83 Fed. Res. Bull. 335 (1997) (permitting bank holding company to provide computer software to broker-dealers and other financial institutions to permit those institutions to execute purchases and sales of securities for their customers).

Board of Governors of the Federal Reserve System, March 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–6173 Filed 3–13–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 8, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Citizens Bancshares, Inc., Dyersburg, Tennessee; to acquire 100 percent of Metropolitan Bancshares, Inc., Munford, Tennessee, and thereby indirectly acquire The Munford Union Bank, Munford, Tennessee.

Board of Governors of the Federal Reserve System, March 8, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–6094 Filed 3–13–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 29, 2002.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. John T. Michell, Great Falls, Montana; to retain voting shares of First Bancshares of Baton Rouge, Inc., Baton Rouge, Louisiana, and thereby indirectly retain voting shares of First Bank, Baton Rouge, Louisiana.

Board of Governors of the Federal Reserve System, March 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–6172 Filed 3–13–02; 8:45 am]

BILLING CODE 6210–01–S

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will meet on Sunday, April 21, 2002, through Wednesday, April 24, 2002, in Mobile, Alabama. The sessions will take place from 7:30 p.m. until 10 p.m. on Sunday, 8:30 a.m. until 5 p.m. on Monday and Tuesday and from 8:30 a.m. until 2:30 p.m. on Wednesday. The meeting will be held at the Radisson Admiral Semmes Hotel, 251 Government Street, Mobile, Alabama 36602. The purpose of

this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public.

A limited number of hotel rooms have been reserved at the Radisson Admiral Semmes Hotel for anyone needing hotel accommodations. Telephone: 251–432–8000. Please specify the U.S. Government Printing Office or the Depository Library Council meeting when you contact the hotel. Room cost is $55 (plus tax) per night through March 20, 2002.

Robert T. Mansker,

Deputy Public Printer.

[FR Doc. 02–6093 Filed 3–13–02; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held of Friday, March 29, from 8:30 a.m. to 4 p.m. and is open to the public.

ADDRESSES: The meeting will be held at 6010 Executive Boulevard, Fourth Floor, Rockville, Maryland, 20852.

FOR FURTHER INFORMATION CONTACT: Anne Lebbon, Coordinator of the Advisory Council, at the Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 600, Rockville, Maryland, 20852, (301) 594–7216. for press related information, please contact Karen Migdail at (301) 594–6120.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHRQ, on (301) 594–6662 no later than March 22, 2002.

Agenda, roster, and minutes are available from Ms. Bonnie Campbell, Committee Management Officer, Agency for Healthcare Quality and Research, 2101 E. Jefferson Street, Suite 400, Rockville, Maryland, 20852. Her phone number is (301) 594–1846. Minutes will be available after April 30, 2002.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) established the National Advisory Council for Healthcare Research and Quality. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of the Agency to enhance the quality, improve outcomes, reduce cost of health care services, improve access to such services through scientific research, the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services. The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members.

II Agenda

On Friday, March 29, 2002, the meeting will begin at 8:30 a.m., with the call to order by the Council Chairman. The Director, AHRQ, will present the status of the Agency's current research, programs, and initiatives. Tentative agenda items include discussions on disparities in health care, bioterrorism, and AHRQ's Priority Populations Inclusion Policy. The official agenda will be available on AHRQ's website at *www.ahrq.gov* no later than March 8, 2002. The meeting will adjourn at 4:00 p.m.

Dated: March 4, 2002.

Lisa Simpson,

Acting Director.

[FR Doc. 02–6118 Filed 3–13–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measure.

OMB No.: 0970–0230.

Description: This is a proposed extension of a current information collection. The purpose of this collection is to obtain data upon which to base the computation for measuring State performance in meeting the legislative goals of TANF as specified in section 403(a)(4) of the Social Security Act and 45 CFR part 270. Specifically, DHHS will use the data to award the portion of the bonus that rewards States for their success in moving TANF recipients from welfare to work. States will not be required to submit this information unless they elect to compete on a work measure for the TANF High Performance Bonus awards.

Respondents: Respondents may include any of the 50 States, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures	54	2	16	1,728

Estimated Total Annual Burden Hours: 1,720.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 6, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–6120 Filed 3–13–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: DHHS/ACF Employment Retention and Advancement (ERA) Evaluation 12-Month Survey.

OMB No.: New Collection.

Description: The Employment Retention and Advancement (ERA) Evaluation is the most ambitious, comprehensive effort to learn what works in this area to date and is explicitly designed to build on past research by rigorously testing a wide variety of approaches to promoting employment retention and advancement for a range of populations. The project, conceived and sponsored by the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services (HHS),[1] seeks to ''conduct a multi-site evaluation that studies the net impact and cost-benefits of programs designed to help Temporary Assistance for Needy Families (TANF) recipients, former TANF recipients, or families at-risk of needing TANF benefits retain and advance in employment.'' [2] The ERA Evaluation involves up to 15 random assignment experiments in 9 states, testing a diverse set of strategies designed to promote stable employment and/or career advancement for current and former welfare recipients and other low-income parents. Over the next several years, the ERA project will generate a wealth of rigorous data on the implementation, effects, and costs of these alternative approaches. The data collected will be used for the following purposes:

- To study ERA's impacts on employment, earnings, participation, educational attainment and income;
- To collect data on a wider range of outcome measures than is available through welfare or UI records in order to understand how individuals were affected by ERA; job retention and job quality, educational attainment; interactions with and knowledge of the ERA program; household composition; childcare, transportation, and health coverage; and income;
- To supplement research on the implementation of ERA across sites;
- To conduct non-experimental analyses to explain participation decisions and provide a descriptive picture of the circumstances of low-wage workers;
- To obtain participation information important to the evaluation's benefit-cost component;
- And to obtain contact information for possible future follow-up, information that will be important to achieving high response rates for the 36-month survey.

Respondents: The respondents of the 12-month survey are Temporary Assistance for Needy Families (TANF) applicants, current and former TANF recipients, or individuals in families at-risk of needing TANF benefits (working poor and hard-to-employ) from 9 states participating in the ERA Evaluation: California, Oregon, New York, Ohio, Minnesota, Illinois, South Carolina, Texas, Tennessee. Survey respondents can be grouped according to 3 program clusters: Advancement projects; placement and retention (hard-to-employ) projects; and mixed goal projects. All 3 program clusters will receive the 12-month core survey. The placement and retention (hard-to-employ) participants will also receive the hard-to-employ survey module. Survey participants will be administered a telephone survey (for those individuals who cannot be reached by phone, staff at the survey firm will attempt to contact them in person) approximately 12 months after random assignment. Approximately 7,050 participants will complete the core survey and 2,400 participants will complete the core plus hard-to-employ module survey.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
12-Month Survey (Core only)	7,050	1	30 minutes or .5 hrs	3,525
12-Month Survey (Core plus Hard-to-Employ Module)	2,400	1	45 minutes or .75 hrs	1,800

Estimated Total Annual Burden Hours: 5,325.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

[1] The U.S. Department of Labor has also provided funding to support the ERA project.

[2] From the Department of Health and Human Services RFP No.: 105–99–8100

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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 7, 2002,

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–6121 Filed 3–13–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/HS 02–04]

Fiscal Year 2002 Discretionary Announcement for Nationwide Competition of Early Head Start; Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), DHHS.

ACTION: Notice of Fiscal Year 2002 Early Head Start availability of financial assistance for nationwide competition and request for applications.

SUMMARY: Early Head Start programs provide early, continuous, intensive and comprehensive child development and family support services on a year-round basis to low-income families. The purpose of the Early Head Start program is to enhance children's physical, social, emotional, and intellectual development; to support parents' efforts to fulfill their parental roles; and to help parents move toward self-sufficiency. The Administration on Children, Youth and Families announces approximately $72 million in financial assistance to be competitively awarded to local public and private non-profit and for-profit entities—including Early Head Start and Head Start grantees—to provide child and family development services for low-income families with children under age three and pregnant women. Faith-based organizations are eligible to apply for these funds to become Early Head Start grantees.

Applicants may apply for one or more of the following categories of expansion:

1. Current Early Head Start grantees, proposing to expand in their currently approved EHS service area ($20 million). (See Priority 1 Evaluation Criteria.)

2. Applicants, including current Early Head Start grantees and, proposing to establish an Early Head Start program in areas currently unserved by Early Head Start (see Attachment A for a listing of currently served areas; any area not listed is eligible for funding in this category) ($42 million). (See Priority 1 Evaluation Criteria.)

3. Applicants proposing to serve children in an Early Head Start program whose families are receiving support from the Child Welfare Services (CWS) system ($10 million). (See Priority 2 Evaluation Criteria.)

Applicants eligible for funding under this category are as follows:

a. Current grantees may include a request for serving CWS children as a second part of their application under either 1 or 2 above or may submit an application only to serve CWS children.

While each applicant should decide on the appropriate mix between CWS children and other children, we would not expect applicants to propose that a large portion of their children be CWS children unless there are compelling reasons for doing so which must be documented in the application.

b. Applicants who are not current EHS providers may apply to serve CWS children only if they are also submitting an expansion proposal under 2 above.

While each applicant should decide on the appropriate mix between CWS children and other children, we would not expect applicants to propose that a large portion of their children be CWS children unless there are compelling reasons for doing so which must be documented in the application.

DATES: The closing date and time for receipt of applications is 4:30 p.m. EDT on May 13, 2002.

Note: Applications should be submitted to: Early Head Start Nationwide Competition, 1901 N. Fort Myer Drive, Suite 301, Arlington, VA 22209. However, prior to preparing and submitting an application, in order to satisfactorily compete under this announcement, it will be necessary for potential applicants to read the full announcement which is available through the addresses listed below.

ADDRESSES: A copy of the program announcement, necessary application forms, and appendices can be obtained by contacting: Early Head Start Nationwide Competition, 1901 North Fort Myer Drive, Suite 301, Arlington, Virginia 22209. The telephone number is 1–800–458–7699; or e-mail to: *ehsn@pal-tech.com.*

Copies of the program announcement and necessary application forms can also be downloaded from the Head Start Web site at: *www.acf.dhhs.gov/programs/hsb*

FOR FURTHER INFORMATION CONTACT: Early Head Start Nationwide Competition, 1901 N. Fort Myer Drive, Suite 301, Arlington, VA 22209 or telephone: 1–800–458–7699 or e-mail to: *ehsnpal-tech.com.*

SUPPLEMENTARY INFORMATION:

Eligible Applicants

Applicants eligible to apply to become an Early Head Start program are local public and private non-profit and for-profit entities. Early Head Start and Head Start grantees are eligible to apply. Faith-based organizations are eligible to apply for funds. Applicants are reminded that eligibility to apply for a grant under this Notice is limited to local agencies, as defined in section 641 (a) and (b) of the Head Start Act.

Project Duration

For new Early Head Start grantees, the competitive awards made through this announcement will be for one-year budget periods and an indefinite project period. Subsequent year budget awards will be made non-competitively, subject to availability of funds and the continued satisfactory performance of the applicant. Successful applicants which are current Early Head Start grantees will be funded in one of two ways. Those Early Head Start grantees that currently have indefinite project periods will continue to be funded as indefinite project period grants. However, those Early Head Start grantees that have finite project periods will be given supplements to their current, time limited grant. A grantee, for example, currently funded for $200,000 with a project period ending September 30, 2003 that is awarded another $100,000 through this announcement would then be funded as a $300,000 Early Head Start grantee with a project period that still ends on September 30, 2003. This would be true regardless of whether the new funds are to expand services within the grantee's current service area or to expand into another currently unserved area. Prior to the end of an Early Head Start grantee's current project period (*i.e.,* September 30, 2003 in the above example), ACF will announce a competition for those areas served by each EHS grantee whose project period is nearing an end. In such a competition, current EHS grantees in good standing, who submit acceptable

applications, will be given priority in funding decisions.

Early Head Start Child Welfare Services Initiative (See Priority 2 Evaluation Criteria)

The Head Start Bureau is establishing a new initiative to promote and expand partnerships between local EHS programs and local child welfare services (CWS) agencies. This initiative will enhance and expand services for children and their families who are part of the child welfare service system and provide additional and more intensive services in local communities for this population. The Head Start Bureau is setting aside $10 million to fund this initiative and plans to serve approximately 1,000 children. Both new applicants and existing EHS grantees may apply for these funds. See below for the Priority 2 Evaluation Criteria for the EHSCWS Initiative. For additional information about the Initiative, see the full Program Announcement for this competition which is available from the address listed above.

Federal Share of Project Costs

The Federal share will not be more than 80 percent of the total approved costs of the project except if a waiver is granted under the authority cited in section 640(b) of the Head Start Act.

Matching Requirements

Grantees that operate Early Head Start programs must, in most instances, provide a non-Federal contribution of at least 20 percent of the total approved costs of the project.

Available Funds

See the Program Announcement for the list of the approximate amount of funds available for States. (The Program Announcement is available from the address listed above.)

Anticipated Number of Projects to be Funded

It is estimated that there will be 100–125 awards.

Statutory Authority

The Head Start Act, as amended, 42 U.S.C. 9831 et seq.

Priority 1 Evaluation Criteria

All new applicants and current grantees proposing to expand services in their current service area or provide services in a new service area should address the criteria for Priority 1 below. Competing applications for financial assistance will be reviewed and evaluated on the six criteria which are summarized below. The point values following each criterion indicate the numerical weight each criterion will be accorded in the review process.

Criterion 1: Objectives and Need for Assistance (15 Points)

The extent to which, based on community assessment information, the applicant identifies any relevant physical, economic (*e.g.,* poverty in the community), social, financial, institutional, or other issues which demonstrate a need for the Early Head Start program.

The extent to which the applicant lists relevant program objectives that adequately address the strengths and needs of the community.

The extent to which the applicant describes the population to be served by the project and explains why this population is most in need of the services to be provided by the program.

The extent to which the applicant gives a precise location and rationale for the project site(s) and area(s) to be served by the proposed project. If the applicant is a current grantee planning to expand its program it needs to demonstrate that the geographic area is currently underserved or, where applicable, unserved by Early Head Start Programs. If the applicant is new, it needs to demonstrate that the proposed service area is currently unserved by Early Head Start programs.

Criterion 2: Results or Benefits Expected (10 Points)

The extent to which the applicant identifies the results and benefits to be derived from the project and links these to the stated objectives.

The extent to which the applicant describes the kind of data to be collected and how they will be utilized to measure progress towards the stated results or benefits.

Criterion 3: Approach (25 Points)

The extent to which the applicant demonstrates a thorough knowledge and understanding of the Head Start Program Performance Standards.

The extent to which the applicant explains why the approach chosen is effective in light of the needs, objectives, results and benefits described above.

The extent to which the approach is grounded in recognized standards and/or guidelines for high quality service provision or is defensible from a current research or best practices standpoint.

Criterion 4: Staff and Position Data and Organization Profiles (15 Points)

The extent to which the proposed program director, proposed key project staff, the organization's experience, including experience in providing early, continuous, and comprehensive child and family development services, and the organization's history with the community demonstrate the ability to effectively and efficiently administer a project of this size, complexity and scope.

The extent to which the applicant's management plan demonstrates sufficient management capacity to implement a high quality Early Head Start program.

The extent to which the organization demonstrates an ability to carry out continuous improvement activities.

Criterion 5: Third Party Agreements/Collaboration (15 Points)

The extent to which the applicant presents documentation of efforts (letters of commitment, interagency agreements, etc.) to establish and maintain ongoing collaborative relationships with community partners.

The extent and thoroughness of approaches to combining Early Head Start resources and capabilities with those of other local child care agencies and providers to provide high quality child care services to infants and toddlers which meet the Head Start Program Performance Standards.

Criterion 6: Budget and Budget Justification (20 Points)

The extent to which the program's costs are reasonable in view of the planning and activities to be carried out and the anticipated outcomes.

The extent to which the program has succeeded in garnering cash or in-kind resources, in excess of the required Federal match, from local, State, other Federal or private funding sources. The extent to which costs for facilities are reasonable and cost effective.

The extent to which the salaries and fringe benefits reflect the level of compensation appropriate for the responsibilities of staff.

The extent to which assurances are provided that the applicant can and will contribute the non-Federal share of the total project cost.

Priority 2 Evaluation Criteria

All applicants (current grantees and new applicants) applying to serve children under the EHS Child Welfare Services Initiative discussed in detail in the full program announcement should address the following six evaluation criteria separately in their application. Competing applications for financial assistance will be reviewed and evaluated on the six criteria. The point values following each criterion indicate

the numerical weight each criterion will be accorded in the review process.

Criterion 1: Objectives and Need for Assistance (15 Points)

The extent to which the applicant identifies the need and objectives for services to children and their families who are in the child welfare system, how many children and families will be served, and provide a description of the children and families to be served through the EHSCWS Initiative. This could include children in the child welfare system who are living with their parents or other family members, those in foster care settings, children whose parents are incarcerated or in substance abuse recovery programs, and/or other children birth to three who are within the child welfare system. The children the applicant proposes to serve must also meet EHS eligibility requirements, and can receive EHS services until the child is three years of age, even if the CWS services end.

Criterion 2: Results or Benefits Expected (10 Points)

The extent to which the applicant identifies and describes the results and benefits to be derived from the EHSCWS Initiative and link these to the stated objectives.

The extent to which the applicant describes the kind of data to be collected and how they will be utilized to measure progress towards the stated results or benefits.

Criterion 3: Approach (25 Points)

The extent to which the applicant describes the Early Head Start Child Welfare Services (EHSCWS) collaboration design and the approach to providing services to EHSCWS children through this Initiative, and outlines a plan of action for implementing those services, including the scope and detail of how the proposed work will be accomplished. This will include information about recruitment, what each partner will be responsible for in the delivery of services, how both the Head Start and the applicable Child Welfare Services regulations will be met, and what kind of shared communication system will be in place between the partners that will ensure quality and timely delivery of services

Criterion 4: Staff and Position Data and Organization Profiles (15 Points)

The extent to which the applicant describes the staffing plan for the EHSCWS Initiative, including how the partners will share staff, supervise staff, and provide training. They will indicate other areas of resource sharing, such as space and the possible co-location of staff.

Criterion 5: Third Party Agreements/ Collaboration (15 Points)

The extent to which the applicant includes a written collaboration agreement between the EHS and local CWS agency that specifically outlines the roles and responsibilities of each partner and how the EHSCWS Initiative will be carried out.

Criterion 6: Budget and Budget Justification (20 Points)

The extent to which the applicant submits a reasonable budget and justification that supports the activities proposed for the partnership, and that is appropriate in the carrying out of the EHSCWS Initiative. Grantees must budget for two meetings in Washington, DC, during the first year of funding. Project directors and evaluators will meet approximately three months after funding for approximately two days. In years two and three, grantees will be expected to send both their project directors and evaluators to one meeting in Washington, DC each year.

Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these jurisdictions need not take action regarding Executive Order 12372.

Applications for projects to be administered by Federally recognized Indian Tribes are also exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOC as soon as possible to alert them to the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to the ACF, they should be addressed to: William Wilson, Head Start Bureau, Grants Officer, 330 C Street SW., Room 2220, Washington, DC 20447.

Attn: Early Head Start Nationwide Competition/Expansion

A list of the Single Points of Contact for each State and Territory can be found on the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html*

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: March 7, 2002.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

Appendix A

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002

State and county	Service area (local community)
Alabama:	
Blount	The communities of Allgood, Locust Fork and all areas north of those communities.
Lawrence	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Morgan	Entire County.
Jefferson	Birmingham, Bessemer, Tarrant City, Centerpoint, Adamsville, Grayville, Brookville, Sayre, Roebuck, Ensley, Forrestdale, Gardendale, and other small unincorporated areas. Referrals from the county welfare agency for teen mothers and mothers with chemical addictions and at risk of child abuse.
St. Claire	Entire County.
Walker	Jasper.
Elmore	Bradford.
Chilton	Entire County.
Autauga	Autaugaville.
Lee	Entire County.
Russell	Entire County except Phenix City.
Tuscaloosa	Entire County.
Montgomery	Entire County.
Calhoun	Anniston.
Houston	Entire County.
Alaska:	
Lower Yukon	Villages of Pilot Station and St. Mary's.
Kuskokwin	Villages of Akiak and Nunapitchuk.
Anchorage	Municipality of Anchorage.
Fairbanks North Star	Entire Borough.
Arizona:	
Apache	Concho, Springerville, St. Johns.
Coconino	Grand Canyon, Flagstaff, Page, Williams.
Yavapai	Ashfork/Seligman, Black Canyon City, Camp Verde, Sedona, Prescott Valley, Prescott, Humboldt/Dewey/Mayer, Cottonwood, Chino Valley, Clarkdale.
Navajo	Holbrook, Pinetop-Lakeside, Show Low, Snowflake, Winslow.
Maricopa	City of Phoenix: an area bounded by Camelback Road on the north; Elliot Road on the south; 40th Street on the east; and 43rd Avenue on the west. City of Avindale: an area bounded on the north by Van Buren; on the east by Dysart; on the south by Litchfield Road; and on the west by Lower Buckeye Road. El Mirage: an area bounded on the north by Bell Road; on the east by 107th Avenue; on the west by 120th Avenue; and on the south by Northern Avenue. South Central Phoenix: Baseline on the south; north to Van Buren; 35th Avenue on the west; and east to 40th Street.
Pima	Entire County.
Graham	Entire County.
Santa Cruz	Entire County.
Conchise	Entire County.
Greenlee	Entire County.
Pinal	Entire County.
Gila	Entire County.
Navajo Nation (also see CO, NM, and UT).	Navajo Reservation. Navajo School Board.
Mohave (also see Washington County in UT).	Colorado City.
Arkansas:	
Arkansas	Entire County.
Logan	Entire County.
Lonoke	Entire County.
Conway	Entire County.
Franklin	Entire County.
Johnson	Entire County.
Yell	Entire County.
Polk	Entire County.
Pope	Entire County.
Calhoun	City of Hampton.
Ouachita	City of Bearden.
Union	City of Fairview.
Clay	Cities of Rector, Piggott, and Corning.
Lawrence	Entire County.
Randolph	Entire County.
Newton	Entire County.
Mississippi	Entire County.
Pulaski	(1) Townships of College Station, Sweet Homes, Higgins, and Wrightsville to Oak Street. (2) In the City of Little Rock: the township of Granite Mountain; and in east Little Rock: east of Main Street to include West Broadway north and south; Interstate 30 South, Scott Hamilton Rd., Baseline Rd., and Geyer Springs Road. Within the City of Little Rock: north of Roosevelt Road; west of Main Street; east of University Avenue; and south of I–630.
Sebastian	All of Wards One and Two on the north side of Fort Smith; joined and bordered by the Arkansas River on the north, east and west; ending to the south at Rogers Avenue, Dodson Avenue, and Euper Lane.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Washington	Entire County.
California:	
Alameda	Albany, Berkeley, Emeryville.
	San Leandro, Castro Valley, Union City, Fremont, San Lorenzo, Hayward Livermore, Dublin and Pleasanton (Cherryland), and Newark.
	West Oakland, San Antonio, Fruitvale, Central East Oakland and Elmhurst.
Calaveras	San Andreas, Valley Springs and Angels Camp.
Colusa	Colusa, Grimes, Princeton, Williams, Arbuckle, Maxwell, Meridian.
Contra Costa	Concord, Pleasant Hill, Antioch, Brentwood, Oakley, Richmond, San Pablo, Pittsburg.
Del Norte	The cities of Crescent City, Fort Dick, Smith River, Orleans, Orick, Willow Creek, McKinleyville.
Humboldt	Eureka, Arcata, South Bay, Fortuna, Ferndale, Rio Dell, Rohnerville, Bridgeville, Miranda, Alderpoint, Redway.
	Hoopa Valley Indian Reservation.
El Dorado	Entire County.
Fresno	West Fresno, Southeast Fresno, and Fresno Unified School District.
Kern	East Bakersfield, Arvin/Lamont, Delano, Shafter, and Southwest Bakersfield.
	Metro Bakersfield.
Kings	Corcoran and Hanford.
Hanford	Avenal and Lemoore.
Lake	Lake, Mendocino.
Modoc	Entire County.
Siskyu	Tulelake School District.
Los Angeles	City of Los Angeles: Areas within the following boundaries:
	(1) 3rd and Temple—on the north, to Hoover, to Vermont, to 7th, to Wilshire, to Hoover and Central on the south border in downtown L.A.
	(2) Baldwin Park USD—north: Oak Ave. and Arrow Hwy; south: Farnell; east: Azusa Canyon, La Serna, Willow, Ardilla, Mayland; west: San Gabriel River.
	(3) City of South El Monte—north: Garvey Ave, Fern St., Elliot Ave., and Schmidt Rd.; south: Whittier Narrows Recreation Area; east: San Gabriel River, Fruitvale Ave.
	(4) El Monte City border; west to Whittier Narrows Recreation Area and Rio Hondo River; north: Century Blvd., 104th Street, 103rd Street; south: Anderson Fwy (105); east: Prairie Ave.; west: La Cienega Blvd.
	(5) Gardena—north: El Segundo Blvd.; south: 182 St., Artesia Blvd. and Redondo Beach Blvd; east: Vermont Ave; west: Crenshaw Blvd. and Gramercy Blvd.
	(6) North: Century Blvd., 104th Street, 103rd Street; south: Anderson Freeway (105); east: Prairie Ave.; and west: Crenshaw and Gramercy Blvds.
	(7) Plaza De La Raza—north: A.T.& S. F. Railroad and Washington Blvd.; south: Lakeland Rd. and Imperial Hwy.; east: Shoemaker, Carmenita and Mulberry; west: San Gabriel River (605 Freeway).
	(8) Plaza De La Raza—north: Imperial Hwy; south: Excelsior Dr., Alondra Blvd. and Santa Ana Frwy; east: Valley View Ave., Marquardt Ave.; west: Shoemaker Ave., Bloomfield Ave., Best Ave. and Norwalk City border.
	(9) Pomona USD—north: Foothill Blvd., Lewis Ave., Oak Dr., Parkwood Ln., Harrison Ave., Arrow Ave. and American Ave.; south: Pomona Frwy (60) and Riverside Dr.; east: San Bernardino County Line, Mountain Ave., Carnegie Ave., and Towne Ave.; west: Fulton Rd., L.A. County Fairplex, Fairplex Dr., San Bernardino Frwy (10), and Campus Dr.
	(10) North Hollywood—north: Saticoy St.; south: Universal City Border, Acama St. and Riverside Dr.; east: Clybourn Ave., Burbank Airport, and Burbank City border; west: Tujunga Ave., Fulton Ave., Coldwater Canyon Ave., and Hollywood Frwy. (170).
	(11) Harbor City—north: Sepulveda Blvd., Lomita Blvd.; south: Palo Verdes Dr., Anaheim St.; east: Harbor Frwy (110) and Normandie Ave.; west: Western Ave., City of Torrance border, and City of Lomita border.
	(12) North Hollywood, Sunland and Harbor City, Wilmington, San Perdo, Lomita, Carson, portions of Torrence and Ranchos PalasVerde, Downey, Southcentral, LA, Westwood, Pomano, Echo Park area, Pico Rivera, Antelope Valley (Lancaster, Palmdale). Bell, Bell Gardens, and Cudahy.
	(13) West: Highland Avenue; north: 6th Street; east: Hoover Street; south: 9th Street (turns into James M. Wood Blvd.).
	North: 6th Street; East: Hoover; West: Highland Avenue; South: 9th Street.
	An area bounded on the north by 3rd Street; on the east by Central Avenue; on the south by Vernon Avenue; and on the west by Western Boulevard.
	Greater Hollywood area: City of West Hollywood and Mid-Wilshire District.
	An area bounded on the north by Wilshire Blvd to Sepulveda to Olymouc; on the east by Beverly Drive to Pico to Durango to La Cienega to Jefferson to Sepulveda to Centinela to Praire; on the south by Imperial Highway to Sepulveda to Lincoln to Admiralty Way to Washington; on the west by the Pacific Ocean Cities of Santa Monica, West Los Angeles, Culver City, Inglewood, Lennox, Westchester, Venice, Palms and Mar Vista.
	City of Long Beach, central area.
	South Central LA: an area bounded on the north by Slauson Avenue; on the south by Century Blvd.; on the east by Avalon Blvd.; and on the west by Van Ness Avenue.
	The communities of West Adams, Jefferson Park, and University Park.
	An area bounded by 9th Street on the north; Martin Luther King Blvd. on the south; San Perdro Street on the east; and Crenshaw on the west.
	Compton.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
	Cities of Pasadena, Altadena and Glendale.
	City of Hawaiian Gardens.
Orange County	Entire County.
San Bernardino	City of Upland.
	Cities of San Bernardino and Colton.
Marin	San Rafael, Novato, Corte Madera, Greenbrae, San Anselmo.
Mendocino	Ukiah, Willits.
Nevada	North San Juan, Nevada City, Truckee.
Placer	Lincoln, Rocklin, Kings Beach, Foresthill.
Sacramento	(1) The City of Sacramento: the communities of Del Paso Heights, North Sacramento/Gardenland, Midtown, Oak Park, South Sacramento, Meadowview, Natomas, Land Park and Arden/Howe.
	(2) Cities of Citrus Heights and Galt.
	(3) Towns of Rio Linda/Everta, North Highlands, Foothill Farms, Orangevale, Carmichael, Fair Oaks, Rancho Cordova, South Sacramento, Franklin/Laguna, Elk Grove, and Antelope.
	(4) Woodland, Winters, Davis and West Sacramento.
San Diego	Carlsbad, Encinitas, Del Mar, Solana Beach, Escondido, San Diego, Poway, Coronado, La Mesa, El Cajon, Lemon Grove, Santee, Ramona, Palomar Julain, Anza Borrego, Lakeside, Spring Valley, Jamul, Harbinson Crest, Laguna Pine Valley, Mountain Empire, Alpine, Chula Vista, National City, Imperial Beach, Nestor.
	Oceanside, Vista, San Marcos, Fallbrook, Valley Center, Rincon, San Pasqual, Pauma Valley.
	Campo Reservation, Rincon Reservation, San Pasqual Reservation, Pauma Reservation, and Pala Reservation.
Riverside	Soboba Reservation, Morongo Reservation, and San Jacinto.
	Cities of Banning and Beaumont.
	All cities in Riverside County with the exception of Banning, Beaumont and Morongo Band Indian Reservation.
San Francisco	Chinatown, Tenderloin, Visitation Valley; and parts of Northbeach, Civic Center, and Bayview Hunters Point.
San Joaquin	Entire County.
San Mateo	Half Moon Bay, East Palo Alto, Menlo Park, South San Francisco, Daly City, San Bruno and San Mateo.
Santa Barbara	Santa Maria, Lompoc, Santa Barbara and Summerland.
Santa Clara	Northwest and central San Jose.
Santa Cruz	Watsonville and Santa Cruz.
Shasta	Entire County.
Siskyu	Community of Weed.
Trinity	Cities of Weaverville and Hayfork.
Stanislaus	Westside of county: areas of Westley and Patterson.
Sutter	Entire County.
Yuba	Entire County.
Tulare	Entire County.
Ventura	Oxnard, Hueneme, Santa Paula, Fillmore and Piru.
Yolo	Entire County.
Sonoma	Sebastopol, Petaluma, Guernville, Sonoma, Rohnert Park, Windsor, and Santa Rosa.
San Luis Obispo	Entire County.
San Benito	Entire County.
Monterey	Chular, Greenfield, King City, San Lucas, San Ardo, Bradley, Gonzales.
	Seaside, Marina, East Salinas, Pajaro, Castroville, Prunedale, Soledad, Speckles, Monterey, Boronda.
Colorado:	
Adams	City of Aurora within Adams County.
Arapahoe	City of Aurora within Arapahoe County.
Crowley	Entire County.
Otero	Entire County.
Denver	An area bounded on the east by Colorado Boulevard; on the north by I–70; on the west by Sheridan Boulevard; and on the south by Hampden Avenue.
	Neighborhoods of East Colfax, Northeast Park Hill, Elyrie Swansea, Clayton, Cole, Five Points, Whittier, and Auraria Lincoln Park.
	Northwest Denver: an area bordered by Sheridan Blvd. on the west; I–70 on the north; I–25 on the east; and Mississippi Avenue on the south.
Eagle	Entire County.
El Paso	Entire County.
Fremont	Entire County.
Larimer	Pourde School District boundary that includes the cities of Fort Collins, LaPorte, Timnath and Wellington, and the communities of Wellington, La Porte, Loreland and surrounding areas.
La Plata	Within the boundaries of the Southern Ute Reservation and the Ignacio School District.
	Entire County, with the exception of the area served by Southern Ute Nation.
Navajo Nation (also see AZ, NM, and UT).	Navajo Reservation, Navajo School Board.
Connecticut:	
Fairfield	City of Bridgeport: neighborhoods of The Hollow, West End, South End, North End, East End, and East Side.
	City of Stamford.
Hartford	City of Manchester.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Litchfield	Towns of Torrington, Winston, Canaan, and New Milford.
Middlesex	Towns of Middletown, Essex, Portland, Clinton, Westbrook, East Hampton and Deep River.
New Haven	City of Waterbury.
	City of New Haven.
Windham	Towns of Brooklyn, Danielson and Willimantic.
Tolland	City of Vernon.
Delaware:	
Kent	Entire County.
New Castle	Entire County.
Sussex	Georgetown.
Florida:	
Alachua	Communities of Majestic Oaks, Sugarfoot Oaks, Tower Oaks, Cedar Ridge, Clayton Estates, Magnolia Plantation.
Bay	Panama City Beach.
Franklin	Apalachicola.
Jackson	Entire County.
Baker	Entire County.
Brevard	Entire County.
Broward	Pompano Beach, Hollywood.
Charlotte	Punta Gorda, Port Charlotte.
Collier	Entire County.
DeSoto	Entire County.
Glades	Entire County.
Hardee	Entire County.
Hendry	Entire County.
Highlands	Entire County.
Columbia	Lake City.
Dade	City of Homestead and towns of Brownsville, Scott Carver, Liberty City, Winwood, Goulds, Leisure City, Carol City and Opalocka.
Gadsden	Entire County.
Gulf	Wewahitchka, Port St. Joe.
Jefferson	Entire County.
Madison	Madison, Greenville.
Lake	Clermont, Eustis, Leesburg, Mount Dora, Montclair Village, Groveland.
Lee	Entire County.
Marion	Entire County.
Citrus	Entire County.
Martin	Within Hobe Sound, the communities of Banner Lake and Gomez; within Port Salerno, the communities of Jack Avenue, and New Monrovia; and within Stuart, the community of Golden Gate.
Okaloosa	Crestview and 20 mile radius.
Palm Beach	Pahokee, South Bay and Belle Glade—western region of county, West Palm Beach Hispanic Community, West Palm Beach, North-South West Palm Beach, South Bay, Riviera Beach, Lake Worth, Boynton Beach, Delray Beach.
Sarasota	Sarasota, Cities of Newton, Venice and North Port.
Hillsborough	Entire County.
St. Lucie	Entire County.
Santa Rosa	Entire County.
Dixie	Cross City.
Gilchrist	Trenton.
Levy	Chiefland, Yankeetown, Williston, Bronson.
Volusia	Cities of Daytona Beach and Pierson.
Manatee	Palmetto and East Bradenton.
Pinellas	Entire County.
Georgia:	
Chatham	Savannah.
Catoosa	Entire County.
Chattooga	Entire County.
Dade	Entire County.
Walker	Entire County.
Whitfield	Dalton.
	Entire County, except south of Tilton and north of Varnell.
Murray	Entire County, except north of Eton and south to North Georgia Speedway.
Dougherty	Albany.
Emanuel	Swainsboro, Twin City, Summertown, Adrian, Oak Park, Lexsy, Garfield, Stillmore.
Fulton	East Point, Alpharetta, Roswell, Sandy Springs.
	Downtown Atlanta, Reynoldstown and Bankhead.
Clayton	Jonesboro.
Cobb	Marietta.
Douglas	Douglasville.
Gwinnett	Lawrenceville.
Dekalb	Chamblee.
	South Dekalb bounded by Covinton Highway, Brown's Mill Road and Bouldercrest Road.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Hall	Entire County.
White	Entire County.
Forsyth	Entire County.
Hart	Entire County.
Sumter	Americus.
Carroll	Entire County.
Troup	Entire County.
Coweta	Entire County.
Clarke	Athens.
Greene	Entire County.
Morgan	Entire County.
Hawaii:	
Hawaii	South Kona, North Kona, South Kahala, North Kahala, Ka'u.
Maui	Lanai, Makawao/Upcountry, Hana/East Maui, Lahaina/West Maui.
Oahu	(1) Kalhili and Waipahuto Hawaii Kai. (2) Honolulu vicinity defined by Hawaii Kai (Koolauloa): Kaaawa, Hau'ula, Laie, Kahuku, Pupukea (North Shore), Sunset, and Kahana Valley. Waianae Coast (Leeward Oahu); Waimanalo area (Winward Oahu); and Makalapa area (Central Oahu and Honolulu).
Idaho:	
Bonner	Community of Sand Point.
Kootenai	Cities of Coeur d'Alene, Post Falls and surrounding areas.
Nez Perce (also see Asotin County in the State of Washington.	Nez Perce County, Idaho, except Nez Perce Reservation. Nez Perce Reservation.
Lewis	Nez Perce Reservation.
Clearwater	Nez Perce Reservation.
Ada	Entire County.
Elmore	Entire County.
Payette	City of Payette.
Canyon	Cities of Caldwell and Nampa.
Benewah	Couer d'Alene Reservation.
Kootenai	Couer d'Alene Reservation.
Franklin (also see Box Elder and Cache Counties, Utah).	Entire County.
Illinois:	
Champaign	Entire County.
Clinton	Entire County.
Washington	Entire County.
Cook County	South Chicago, South Deering, South Lawndale, and Lower West Side communities. Near South, Armour Square. An area of New City bounded by Damen Ave. on the west; Racine Ave. on the east; Garfield Blvd. on the south; 49th Pl. on the north; and West Englewood and Englewood communities. Communities of West Humboldt Park and New City with the exception of an area bounded by Damen Ave. on the west; Racine Ave. on the east; Garfield Blvd. on the south; 49th Pl. on the north. Communities of Cicero/Berwyn, Maywood, Bellwood, Robbins, and Hoffman Estates/Schaumburg. Uptown community. Rogers Park and West Ridge communities. Evanston Township. Communities of Grand Boulevard, Washington Park, and Kenwood. Communities of Oakland, Albany, Park, North Lawndale, Gage Park, Fuller Park, Near West Side, Roseland, West Town, Austin, Logan Square, West Pullman, Chatham, Woodlawn, Washington Heights, Near North Side, Garfield Park, and Douglas.
Edwards	Entire County.
Saline	Entire County.
Gallatin	Entire County.
Hamilton	Entire County.
Wabash	Entire County.
Wayne	Entire County.
White	Entire County.
Kane	Towns of Elgin, Aurora, and Carpentersville.
Sangamon	Entire County.
St. Clair	District 1: East St. Louis; District 3: Cahokia; Centreville.
Peoria	City of Peoria.
Madison	Towns of Alton, Granite City, Pontoon Beach, Venice, Collinsville and East Alton.
Will	Town of Joliet.
Williamson	Entire County.
Franklin	Entire County.
DuPage	Towns of Bensenville and surrounding areas, Wheaton, West Chicago, Villa Park, and Lombard.
Lake	Town of Waukegan.
Hancock	Entire County.
McDonough	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Pike	Entire County.
Alexander	Entire County.
Hardin	Entire County.
Johnson	Entire County.
Massac	Entire County.
Pope	Entire County.
Pulaski	Entire County.
Union	Entire County.
Indiana:	
Blackford	Entire County.
Grant	Entire County.
Clay	Entire County.
Owen	Entire County.
Putnam	Entire County.
DeKalb	Entire County.
Howard	Entire County.
Miami	Entire County.
Lawrence	Entire County.
Martin	Entire County.
Orange	Entire County.
Washington	Entire County.
Madison	Entire County.
Marshall	Entire County.
Starke	Entire County.
Marion	Pike, Washington, Lawrence, Wayne, Center, and Warren Townships.
Tippecanoe	Entire County.
Vanderburg	Entire County.
Posey	Entire County.
Vigo	Entire County.
Knox	Entire County.
Sullivan	Entire County.
Kosciusko	Entire County.
Benton	Entire County.
Boone	Entire County.
Fountain	Entire County.
Montgomery	Entire County.
Parke	Entire County.
Vermillion	Entire County.
Warren	Entire County.
Iowa:	
Allamakee	Entire County.
Clayton	Entire County.
Carroll	Entire County.
Dallas	Entire County.
Greene	Entire County.
Guthrie	Entire County.
Blackhawk	City of Waterloo.
Cherokee	Entire County.
Plymouth	Entire County.
Clarke	Entire County.
Decatur	Entire County.
Clay	Entire County.
Des Moines	Entire County.
Henry	Entire County.
Lee	Entire County.
Louisa	Entire County.
Hamilton	Entire County.
Humboldt	Entire County.
Webster	Entire County.
Wright	Entire County.
Linn	Entire County.
Polk	An area bounded on the west by County Line from Raccoon River to 9400 N.; on the north by 9400 N to NW 58th to NW 110th Place to NE 22nd Street to NE 118th Street; on the east by NE 29th to I–80 to NE 120th Street to East University to NE 64th Street to SE 6th to SE 60th to the Des Moines River to I–65 to 80th SW; and on the south by 80th SW/County Line from Des Moines River to 9800 W.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Scott	City of Davenport: an area bounded on the west by the west side of I–280 on the west edge of Davenport continuing from the Mississippi River north to the north side of I–80 on the north edge of Davenport; on the north, from a point where I–280 meets I–80 continuing east to the east side of I–74 on the east edge of Davenport; on the east, from the north starting point of I–74 where it meets I–80, continuing south of I–74 to the Mississippi River; and on the south: east from the east side of I–74 west along the Mississippi River to the west edge of I–280 where I–280 meets the river; and smaller surrounding cities in Scott County including Bettendorf, Bluegrass, Buffalo, Donahue, Eldridge, LeClaire, Long Grove, Maysville, and Walcott.
Woodbury	Entire County.
Hardin	Entire County.
Marshall	Entire County.
Poweshiek	Entire County.
Story	Entire County.
Tama	Entire County.
Kansas:	
Atchinson	Entire County.
Brown	Entire County.
Doniphan	Entire County.
Jefferson	Entire County.
Leavenworth	Entire County.
Marshall	Entire County.
Nemaha	Entire County.
Pottawatomie	Entire County.
Jackson	Entire County, except the Prairie Band Pottawatomi Reservation.
	Prairie Band of Potawatomi Reservation and two communities adjacent to the reservation, Hoyt and Mayetta.
Cherokee	Entire County.
Crawford	Entire County.
Labette	Entire County.
Montgomery	Entire County.
Clay	Entire County.
Cloud	Entire County.
Washington	Entire County.
Dickerson	Entire County.
Ellsworth	Entire County.
Saline	Entire County.
Ford	Entire County.
Johnson	An area bounded on the west by Ogg Road; on the east by Stateline Road; on the north by County Line Road; and on the south by I–435.
Lyon	Entire County.
Riley	Entire County.
Rush	Entire County.
Russell	Entire County.
Ellis	Entire County.
Sedgwick	City of Wichita: an area bounded by Murdock Street on the north; 47th South Street on the south; Woodlawn Street on the east; and Main Street on the west.
Shawnee	Entire County.
Sumner	Entire County.
Wyandotte	Kansas City, an area bounded by Wyandotte/Douglas County Line on the west; the Wyandotte/Johnson county line on the south; and the Kansas/Missouri state line on the north and east.
Finney	Entire County.
Kentucky:	
Bourbon	Entire County.
Fayette	Entire County.
Harrison	Entire County.
Nicholas	Entire County.
Scott	Entire County.
Breckinridge	Entire County.
Grayson	Entire County.
Calloway	Entire County.
Carlisle	Entire County.
Fulton	Entire County.
Marshall	Entire County.
Hickman	Entire County.
Ballard	Entire County.
Graves	The towns of Mayfield, Fancy Farm, Lowes, Sedalia, Symsonia and Wingo.
Warren	Bowling Green, Rockville, Albaton, Rich, Panel, Plano.
McCracken	Paducah, Concord, Farley, Heath, Hendron, Loneoak.
Christian	Hopkinsville.
Daviess	Owensburg.
Ohio	Entire County.
Lyon	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Trigg	Entire County.
Harlan	Entire County.
Clay	Entire County.
Knox	Entire County.
Laurel	Entire County.
Jackson	Entire County.
Rockcastle	Entire County.
Jefferson	Entire County.
Knott	Hindman, West Caney.
Letcher	Jenkins, Fleming.
Lincoln	Entire County.
Owsley	Entire County.
Bullitt	Mt. Washington.
Henry	Eminence.
Casey	Entire County.
Cumberland	Entire County.
Green	Entire County.
Taylor	Entire County.
Bell	Communities of Pineville and Middlesboro.
Whitley	Communities of Williamsburg and Boston.
Louisiana:	
East Baton Parish	City of Baton Rouge: an area starting at the Long Allen Bridge: east to Plank Road (Highway 67); north to Hooper (State Highway 408); northeast on Hooper Road to Greenwell Springs Road (State Highway 37); south and southwest on Greenwell Springs Road to Airline Highway; southeast on Airline Highway to Bayou Manchac; west on Bayou Manchac to the Mississippi River; north to the Long Allen Bridge.
Bossier Parish	Entire Parish.
Iberia Parish	Entire Parish.
Lafayette Parish	Entire Parish.
St. Martin Parish	Entire Parish.
Rapides Parish	Entire Parish.
St. Charles Parish	Entire Parish.
St. Helena Parish	Entire Parish.
St. Tammany Parish	The northern portion of Parish bordered on the north by the St. Tammany/Washington Parish Line; on the east by the Pearl River/Mississippi State Line; on the south by US Highway 190; and on the west by the St.Tammany-Tangipahoa Parish.
Tangipahoa Parish	Entire Parish.
Washington Parish	Entire Parish.
Livingston Parish	Entire Parish.
West Feliciana Parish	Entire Parish.
Orleans Parish	Entire Parish.
Caddo Parish	Entire Parish.
St. Landry Parish	Entire Parish.
Maine:	
Andro-scoggin	City of Lewiston.
	Towns of Livermore, Livermore Falls.
Franklin	Entire County.
Cumberland	Entire County.
Northern Kennebec	Entire County.
Somerset	Entire County.
Oxford	Entire County.
York	City of Biddeford.
Penobscot	Greater Bangor.
Hancock	Greater Ellsworth.
Maryland:	
Alleghany	Entire County.
Baltimore	City of Baltimore: The communities of Edmondson Village, Sandtown/Winchester, Reservoir Hill, Park Heights (upper and lower), WashingtonVillage/Pigtown, Mideast, Forest Heights, Mondawmin, Howard Park, Rosemount, Franklin Square, Poppletown, Penn/Druid/Uppertown, Green Mount East, Hopkins Middleast, Madison East End, Cherry Hill, Brooklyn/Curtis Bay, Claremount, Armstead, Beechfield/Irvington, Belair/Edison, Waverly, Govans, Hampden/Woodbury, and Barclay (entire city).
	City of Baltimore: An area bounded on the north by Monument Street; on the south by the Waterfront; on the east by the City Line; and on the west by Broadway Street.
Caroline	Entire County.
Anne Arundel	Southern Anne Arundel County, including the towns of Harwood, West River, Galesville, Lothian, Churchton, Deale, Shady Side and Traceys Landing.
Cecil	Entire County.
Dorchester	Entire County.
Garrett	Entire County.
Harford	Entire County.
Montgomery	Gaithersburg and Germantown.
	Rockville, Silver Spring, Wheaton, and Tacoma Park.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Prince George's	Hyattsville, Riverdale, Langley Park, Greenbelt, Adelphi, College Park, Glendarden, Capital Heights, and Landover.
Washington	Entire County.
Massachusetts:	
Bristol	City of Fall River, and the Towns of Somerset, Swansea, Rehoboth, Dighton, Freetown, Berkley, Lakeville, and Seekonk.
	Towns of Raynham and Taunton.
Essex	Cities and towns of Lawrence, Methuen, Andover, and North Andover.
Franklin	Towns of Greenfield, Orange, and Turners Falls.
Hampden	Cities of Holyoke, Chicopee, and Springfield.
Middlesex	City of Somerville.
	City of Lowell.
Suffolk	City of Boston.
	City of Boston.
Worcester	Towns of Southbridge, Webster, Oxford, Millbury, Spencer.
Norfolk	Quincy, Braintree, Weymouth, and Milton.
Plymouth	Hull.
Middlesex	Arlington, Watertown, Waltham, Newton.
Norfolk	Brookline.
Michigan:	
Alger	Entire County.
Marquette	Entire County.
Alpena	Entire County.
Bay	Entire County.
Iosco	Entire County.
Arenac	Entire County.
Cheboygan	Entire County.
Antrim	Entire County.
Benzie	Entire County.
Charlevoix	Entire County.
Emmet	Entire County.
Grand Traverse	Entire County.
Kalkaska	Entire County.
Leelanau	Entire County.
Missaukee	Entire County.
Roscommon	Entire County.
Wexford	Entire County.
Delta	Entire County.
Menominee	Entire County.
Schoolcraft	Entire County.
Baraga	Entire County.
Houghton	Entire County.
Keweenaw	Entire County.
Genesee	Carman-Ainsworth School District and Bendel School District.
	Eligible families enrolled in the Michigan Job Corp, Mott Community College, University of Michigan-Flint, and the Career Alliance Program (Sylvester Broome Training Center); Flint School District including service areas of Holmes and Whittier; and School Districts of Clio, Montrose, Mt. Morris, Genesee, Kearsley, West Wood Heights and Flushing.
Clare	Entire County.
Gladwin	Entire County.
Mecosta	Entire County.
Midland	Entire County.
Osceola	Entire County.
Chippewa	Entire County.
Luce	Entire County.
Mackinac	Entire County.
Ionia	Entire County.
Isabella	Entire County.
Gratiot	Entire County.
Montcalm	Entire County.
Gogebic	Entire County.
Ontonagon	Entire County.
Kent	(1) Within the City of Grand Rapids: an area bounded by 3 Mile Road to the north; East Beltline Ave (except East Grand Rapids) to the east; 28th Street to the south; and Byron Center Road/Covell Avenue/Walker Avenue to the west.
	(2) South of Grand Rapids: an area bounded by 28th Street to the north; Patterson Avenue to the east; 68th Street to the south; and Byron Center Avenue to the west.
Manistee	Entire County.
Lake	Entire County.
Newaygo	Entire County.
Mason	Entire County.
Huron	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
LaPeer	Entire County.
Sanilac	Entire County.
Tuscola	Entire County.
Ottawa	Towns of Ferrysburg, Grand Haven, Spring Lake, Crockery Township, Robinson Township; and Holland, West Olive, and Allendale communities.
Wayne	City of Detroit—neighborhoods bounded to the: (1) North by Woodland St.; to the east by Oakland St.; to the south by Warren Av.; and to the west by Byron St. (2) North by Fullerton St.; to the east by Byron St.; to the south by W. Grand Blvd.; and to the west by Holmur St. (3) North by Puritan St.; to the east by Thomas St.; to the south by Fullerton St.; and to the west by Meyers Rd. (4) North by 8 Mile Rd.; to the east by Southfield Fwy.; to the south by Puritan St.; and to the west by Five Points St. (5) North by Puritan St.; to the east by Southfield Fwy.; to the south by Fullerton St.; and to the west by Telegraph Rd.
Calhoun	Entire County.
St. Joseph	Entire County.
Barry	Entire County.
Mackinac	Entire County.
Luce	Entire County.
Delta	Entire County.
Schoolcraft	Entire County.
Marquette	Entire County.
Elger	Entire County.
Chippewa	Entire County.
	Bay Mills Reservation.
Baraga	Keweehaw Reservation.
Gogebic	Lac Vieux Desert Reservation.
Menominee	Hannahville Reservation.
Delta	Little Traverse Bay Band Reservation.
Emmet	Little Traverse Bay Band Reservation.
Charlevoix	Pokagom Reservation.
Otsego	Pokagom Reservation.
Cass	Pokagom Reservation.
Berrien	Entire County.
Van Buren	Entire County.
Ingham	City of Lansing, Lansing School District.
Hillsdale	City of Hillsdale, and north of US 12 to the Jackson County line.
Jackson	Entire County.
Leelanau	Grand Traverse Band Reservation.
Minnesota:	
Anoka	Entire County.
Becker	Entire County.
Hubbard	Entire County.
Mahnomen	Entire County.
Beltrami	Entire County.
Cass	Entire County.
Crow Wing	Entire County.
Morrison	Entire County.
Todd	Entire County.
Kittson	Entire County.
Lake of the Woods	Entire County.
Marshall	Entire County.
Roseau	Entire County.
Ramsey	The following school districts: Moundview, Roseville, North St. Paul-Maplewood-Oak Dale, and White Bear Lake; City of St. Paul (excluding old Model Cities area) bounded by Interstate 35, Interstate 94 and Lafayette Road.
Benton	Entire County.
Sherburne	Entire County.
Stearns	Entire County.
Mille Lacs	Mille Lacs Reservation.
Hennepin	The following communities within the City of Minneapolis: Northeast, University, and Phillips Communities of: Camden, Central, Longfellow, Near North, Nokomis, Powderhorn and Southwest in the City of Minneapolis; the suburban communities of Brooklyn Park, Golden Valley, and Richfield.
Menhnomen	White Earth Reservation.
Becker	White Earth Reservation.
Hubbard	White Earth Reservation.
Cloquet	Fond du Lac Reservation.
Sawyer	Fond du Lac Reservation.
Brookston	Fond du Lac Reservation.
Arlton	Fond du Lac Reservation.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
St. Louis	Fond du Lac Reservation.
Mississippi:	
Calhoun	Entire County.
Lauderdale	Meridian.
Leflore	Greenwood.
Perry	Entire County.
Printiss	Entire County.
Warren	Vicksburg.
Harrison	Biloxi.
Hinds	Entire County.
Holmes	Lexington, Ebenezer, Bowling Green.
Jones	City of Laurel and Towns of Ellisville and Soso.
Copiah	Job Corps site—Crystal Springs.
Leake	Walnut Grove.
Newton	Entire County.
Monroe	Entire County.
Lee	Entire County, except Tupelo.
	Tupelo.
Lafayette	Oxford.
Grenada	Grenada City.
Marshall	Byhalia, Holly Springs.
Panola	Batesville.
Pontotoc	City of Pontotoc.
Tallahatchie	Glendoro.
Tate	Senatobia.
Tunica	City of Tunica.
Chickasaw	Houston.
Oktibbeha	Starkville.
Clay	West Point.
DeSota	Walls.
Lowndes	Columbus.
Noxubee	Macon.
Washington	Hollandale, Arcola, Tralake, Murphy.
Henry	Eminence.
Leake	Mississippi Band of Choctaw Indians Reservation: Community of Redwater.
Neshoba	Mississippi Band of Choctaw Indians Reservation: Communities of Pearl River, Boguechitto, and Tucker.
Adams	Entire County.
Stone	Entire County.
Pike	Entire County, except the City of McComb.
Pearl River	Entire County.
Missouri:	
Adair	Entire County.
Knox	Entire County.
Barry	Entire County.
Christian	Entire County.
Dade	Entire County.
Dallas	Entire County.
Lawrence	Entire County.
Greene	City of Springfield—an area bounded on the north by I–44; on the south by Battlefield Road; on the east by Hwy 65; and on the west by Haseltine Road.
Polk	Entire County.
Stone	Entire County.
Taney	Entire County.
Webster	Entire County.
Bates	Entire County.
Cass	Entire County.
Henry	Entire County.
St. Clair	Entire County.
Buchanan	Entire County.
Cape Girardeau	Entire County.
Jackson	City of Kansas—an area bounded to the north by the Missouri River; to the west by State Line Road; to the south by 112th Street; to the east by Hillcrest Road.
Jasper	Entire County.
Newton	Entire County.
McDonald	Entire County.
Lincoln	Entire County.
Montgomery	Entire County.
St. Charles	Entire County.
Warren	Entire County.
Lafayette	Entire County.
Chariton	Entire County.
Saline	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Ray	Entire County.
Johnson	Entire County.
Moniteau	Entire County.
Pettis	Entire County.
St. Louis	(1) St. Louis County—an area bounded on the north by the Missouri River; on the south by the Meramec River; on the east by Mississippi River, except for St. Louis City which borders St. Louis County on the following streets: Riverview, Goodfellow, Skinker-McCausland, River Des Peres and Carondelet; and on the west by Wild Horse Creek Road, Ossenfort Road, Boguett Road, and Fox Creek Road. (2) St. Louis City—an area bounded on the east by the Mississippi River; on the north, south and west, bordering St. Louis County on the following streets: Riverview, Goodfellow, Skinker-McCausland, River Des Peres, and Carondelet. (3) St. Louis City—an area bounded on the south by Forest Park Parkway and portions of Forest Park; on the west by Skinker Boulevard, Kienlen, Jennings Station Road; on the north by West Florissant Road; and on the east by Grand Boulevard. St. Louis City—an area bounded on the south by Meramec Street; on the west by Grand Avenue to Arsenal Avenue, Arsenal Avenue west to Kingshighway Blvd., north to Columbia Avenue west to Hampton, north to Highway 40 (64), west to Skinker Avenue, north to Forest Park Parkway; on the north by Forest Park Parkway to Grand Avenue, north to St. Louis Avenue, west to Clay Avenue, north to Natural Bridge, west to Clay Avenue, north to West Florissant to Adelaide, north to Highway 70; on the east by Highway 70 to Chouteau Avenue, Chouteau Avenue east to the river and the river south to Meramec.
Marion	Entire County.
Boone	Entire County.
Montana:	
Beaverhead	Entire County.
Silver Bow	Entire County.
Lincoln	School District #4 boundary that includes the city of Libby.
Missoula	Entire County.
Yellowstone	City of Billings and School District #2 boundary that includes the City of Lockwood.
Glacier	Blackfeet Reservation.
Lake	Flathead Indian Reservation.
Hill	Rocky Boy's Indian Reservation. Entire County.
Blaine	Entire County.
Nebraska:	
Adams	Entire County.
Clay	Entire County.
Franklin	Entire County.
Hall	Entire County.
Nuckolls	Entire County.
Webster	Entire County.
Box Butte	Entire County.
Dawes	Entire County.
Douglas	City of Omaha: an area bordered on the north by I–680; on the east by the Missouri River; on the south by Harrison Street (Sarpy County Line); and on the west by 72nd Street. City of Omaha: an area bordered on the north by I–680; on the east by Iowa State Line; on the south by Harrison Street (Sarpy County Line); and on the west by 72nd Street.
Gage	Entire County.
Saline	Entire County.
Brown	Entire County.
Colfax	Entire County.
Custer	Entire County.
Garfield	Entire County.
Greeley	Entire County.
Holt	Entire County.
Howard	Entire County.
Platte	Entire County.
Sherman	Entire County.
Valley	Entire County.
Lancaster	City of Lincoln.
Scotts Bluff	Entire County.
Sarpy	Entire County.
Nevada:	
Clark	Las Vegas, North Las Vegas and Henderson.
Elko	Entire County.
Whitepine	Entire County.
Washoe	Cities of Reno and Sparks.
New Hampshire:	
Belknap	Entire County.
Merrimack	City of Concord, Bossawen, Loudon, Penacook.
Hillsborough	City of Manchester.
Strafford	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
New Jersey:	
Atlantic	Entire County.
Cape May	Entire County.
Camden	City of Camden.
Ocean	Lakewood Township.
Cumberland	Entire County.
Salem	Entire County.
Glouster	Entire County.
Essex	City of East Orange.
	Newark Central Ward, West Ward, North Ward (Verona Avenue to Orange Street and Lake Street to McCarter Highway), and Bakery Village.
	Cities of Montclair and Orange.
Hudson	Union City, North Bergen, West New York, Weehawken, Guttenberg, and Seacaucus.
Passaic	Upper Passaic County—West Milford, Wayne, Ringwood, Bloomingdale, Little Falls, Haledon, Pompton Lakes, Hawthorne, and Wanaque.
	Patterson, Prospect Park, and Clifton.
Sussex	Entire County.
Warren	Entire County.
Morris	Netcong, Dover, and Victory Gardens.
Mercer	City of Trenton.
Middlesex	Entire County.
New Mexico:	
Bernalillo	Within Bernalillo County, areas bounded by: (1) Eastern boundary is the Sandia Mountains; south to Kirtland Air Force Base; west to Wyoming Blvd.; and north to Indian School. (2) Eastern boundary is Wyoming Blvd; south to Kirtland Air Force Base; west to Louisiana at San Pedro at Louisiana; and north to Copper. (3) Eastern boundary is the Sandia Mountains; south to Indian School; west to Eubank; and north to the Bernalillo County line. (4) Eastern boundary is Eubank; south to Indian School; west to San Mateo; south to Indian School at Montgomery; and north to the Bernalillo County line. (5) Eastern boundary is San Mateo; south to the I–40 Freeway at Candelaria; west to Rio Grande and Edith; and north to Ortega Road. (6) Eastern boundary is Rio Grande River; south to Bridge Street; west to 98th Street; and north to I–40. (7) Eastern boundary is 98th Street; south to 122nd Street at Valley Road; west to 122nd Street; and north to I–40. (8) Eastern boundary is Tapia to Joe Sanchez Road; south to Rio Bravo; west to Coors; and north to Arenal. (9) Eastern boundary is Girard; south to Airport Terminal Road; west to I–25; and north to Coal. (10) Eastern boundary is Val Verde; south to Gibson to Smith; west to Girard; and north to Silver.
	Within Bernalillo County, areas bounded by: (1) Eastern boundary is Louisiana and San Pedro; south to Kirtland AFB and the Sunport; west to Girard to Val Verde; and north to Central and Anderson. (2) Eastern boundary is Wyoming; south to Central and Coal; west to I–25; and north to I–40 and Indian School. (3) Eastern boundary is Eubank; south to Indian School; west to Wyoming; and north to Montgomery. (4) Eastern boundary is Edith; south to Ortego Road; west to Rio Grande River; and north to the Bernalillo County line. (5) Eastern boundary is Rio Grande River; south to I–40; west to Petroglyphs; north to the Bernalillo County line. (6) Eastern boundary is Coors Road; south to Blake Road; west to 98th Street; and north to Bridge Blvd. (7) Eastern boundary to Tapia; south to Arenal; west to Coors; and north to Bridge Blvd. (8) Eastern boundary is Rio Grande River; south to Rio Bravo; west to Tapia to Joe Sanchez; and north to Bridge Blvd. (9) Eastern boundary is I–25; south to Isleta Indian Reservation; west to Coors; and north to Rio Bravo. (10) Eastern boundary is I–25; south to Rio Bravo; west to Rio Grande; and north to Caldelaria.
Doña Ana	City of Las Cruces.
Lea	Hobbs and Lovington.
Sandoval	Bernalillo, Cuba, and Rio Rancho.
Santa Fe	Entire County.
Torrance	Entire County.
San Juan	Entire County except the Alamo Navajo Reservation.
	The Alamo Navajo Reservation.
Navajo Nation (also see AZ, CO & UT).	Navajo Reservation, Navajo School Board.
Cibola	Pueblo Laguna Reservation.
Dulce	Jicarilla Apache Reservation.
New York:	
Bronx	Communities of:

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
	(1) University Heights.
	(2) Fordham.
	(3) Riverdale.
	(4) Morris Heights.
	(5) Highbridge.
	Mott Haven and surrounding areas of South Bronx.
	Districts 1, 2, 3, and 4.
	(1) 3rd Ave. and Courtland Ave. through E.161st Street; Grand Ave. through East Featherbed Lane; University Ave. through West 182nd Street; East 146th Street through 156th Street; West on St. Anns Ave. and Union Ave.
	(2) Fulton Ave. to Park Ave.
	(3) East 171st Street and Prospect Ave. through East 182nd.
	(4) East 183rd Street and East 187th St. to East Mosholu.
	(5) North on Longwood Ave. and Boston Rd and Jennings St.
	(6) Charlotte St. and White Plains Rd.
	(7) Sedwick Ave. and Goulden Ave. through West 242nd St.
	(8) West 183rd St. and Grand Concourse through Mosholu to Bruckner Blvd.
	(9) Mott Haven and Hunts Point (Community Board # 1 & 2).
	(10) Spuyten Duyvil (Community Board # 8); University Heights (Community Board # 7).
Manhattan	Mid-town Manhattan—Homeless Population.
	Washington Heights.
	An area bounded by 14th Street to the west; on the north by East of Broad Street and South of 14th Street and Lower East Side; East River across Delancey St. to Allen St., south on Allen St. to Pike St. to East River.
	An area bounded by 125 St. to 218 St, Riverside Drive to Harlem River, Edgecomb Ave, St Nicholas Ave; Washington Hgts: FDR Drive east, to Binery to the south.
	Lower Eastside, north of Broadway and south of 14th Street.
Kings	An area bounded by the Brooklyn Navy Yard on the north; Flatbush and Eastern Parkway on the south and west; and Ashland Place on the east.
	(1) Borough Park—Community Board 12.
	(2) Carnarsie—Community Boards 17 & 18.
	(3) Crown Heights—Community Boards 8 & 9.
Richmond	North Shore-Community Board 13.
Queens	Rockaway Peninsula.
	Northwestern Queens County area, Astoria and Jackson Heights.
Alleghany	Entire County.
Cattaraugus	Entire County.
Wyoming	Entire County.
Chautauqua	Entire County.
Chenango	Entire County.
Dutchess	Entire County.
Herkeimer	Cities of Herkeimer and Rome.
Oneida	City of Utica.
Monroe	City of Rochester.
Onondaga	City of Syracuse.
Rensselaer	Entire County.
Rockland	Village of New Square.
	The village of Haverstraw and outlying areas, the village of Nyak and outlying areas including Valley Cottage, Congeis, Piermont, and Sparkill.
Schenectady	City of Schenectady.
Orange	The Black Dirt Region of Goshen, Warwick, and Florida; and within the City of Middletown, an area bounded by West Main Street on the northwest, to Wickham Avenue on the northeast, south to Genung Street, and west to West Main Street.
Steuben	Entire County.
Yates	Entire County.
Sullivan	Entire County.
Wayne	Wolcott, Butler, Savannah, Huron, Rose Galen, Sodus, Lyons, Newark.
Westchester	Entire county, excluding the City of White Plains.
	City of White Plains.
Erie	City of Buffalo: Teen mothers and pregnant women attending the following high schools: Bennett, Lafayette, Grover Cleveland, Emmerson Vocational, South Park, Riverside, Seneca, Kensington, Alternative, City of Schools, Performing Arts, Buffalo Traditional, Hutch Technical, McKinley, Burgard, and City Honors.
Orleans	Entire County.
Genesee	Entire County.
Saratoga	Entire County.
Washington	Entire County.
Suffolk	Central Brookhaven, including Coram, Medford, North Bellport, Seldon, and Ridge.
Madison	Entire County.
Otsego	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
North Carolina:	
Buncombe	Asheville City School District and Buncombe County School District; Districts of Emma, Woodfin and Johnstown.
	Entire County except Asheville City and Emma, Woodfin, and Johnstown.
Caswell	Entire County.
Guilford	Greensboro.
	Entire County outside of Greensboro.
Macon	Entire County.
McDowell	Entire County.
Orange	Entire County.
Pamlico	Entire County.
Carteret	Entire County.
Craven	Entire County.
Jones	Entire County.
Rowan	Entire County.
Davison	Entire County.
Montgomery	Entire County.
Moore	Entire County.
Stanley	Entire County.
Transylvania	Entire County.
Henderson	Entire County.
Union	Monroe.
Wayne	Entire County.
Cumberland	Fayeteville.
Rutherford	Entire County.
Swain	Entire County.
Jackson	Entire County.
North Dakota:	
Barnes	Entire County.
Stutsman	Entire County.
Dickey	Entire County.
Eddy	Entire County.
Foster	Entire County.
Griggs	Entire County.
LaMoure	Entire County.
Logan	Entire County.
McIntosh	Entire County.
Benson	Spirit Lake Reservation.
	Entire County with the exception of the Spirit Lake Reservation boundary.
Ramsey	Entire County with the exception of the Spirit Lake Reservation boundary.
Wells	Entire County.
Ward	Minot Public School District #1 Boundary, which includes the Minot Air Force Base.
Sioux	Boundaries of Standing Rock Reservation.
Grant	Boundaries of Standing Rock Reservation.
Nelson	Entire County.
Steele	Entire County.
Traille	Entire County.
Grand Forks	Emerado, Larimore, Niagra, Northwood, Reynolds, Thompson, and rural portion of the county.
Cass	City of Fargo and West Fargo.
Ohio:	
Adams	Entire County.
Brown	Entire County.
Clermont	Entire County.
Clark	Entire County.
Montgomery	City of Dayton.
Cuyahoga	City of Cleveland: Glenville, Hough, Detroit-Shoreway, Clark-Fulton, and City of East Cleveland.
Darke	Entire County.
Greene	Entire County.
Shelby	Entire County.
Miami	Entire County.
Hamilton	City of Cincinnati: Neighborhoods of Over-the-Rhine, Mount Auburn, Price Hill, West End, Bond Hill, Roselawn, Avondale, Millvale, and Walnut Hills, Westwood, Camp Washington, Evanston, and East End, South Commonville Fairmont, Fay Apartments/English Woods, Winton Hills, Lincoln Heights, Lockland, and Forest Park.
Lake	Entire County.
Lawrence	Entire County.
Lorain	Towns of Lorain, Elyria, Oberlin, Wellington, Columbia Station, and South Amherst.
Medina	Entire County.
Wayne	Entire County.
Morgan	Entire County.
Washington	Entire County.
Pike	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Preble	Entire County.
Richland	Entire County.
Summit	City of Akron: Communities of North Akron, South Akron, West Akron, East Akron.
Guernsey	Entire County.
Monroe	Entire County.
Noble	Entire County.
Fairfield	Entire County.
Mahoning	Entire County.
Allen	Entire County.
Franklin	Linden-McKinley: a south Linden subdivision which is south of Morse Road, east of Interstate 71, north of East Fifth Avenue, and west of Conrail; Pincrest-Whitehall municipality which is south of East Fifth Avenue, east of James Road, north of Livingston Avenue, and west of Hamilton Road; St. Agnes which is the westside of Columbus bounded on the west by Outerbelt 270, east by the Scioto River, south by Clime Road and north by Interstate 70.
Oklahoma:	
Choctaw	Entire County.
McCurtain	Entire County.
Pushmataha	Entire County.
Creek	Entire County.
Okmulgee	Entire County.
Tulsa	An area bounded on the west by the Creek County line; on the south by the Okmulgee County line; on the east by Hwy 75, from the Okmulgee County line north to 71st St., east to Peoria Avenue, and north to 15th St; and on the north by 15th Street to the Arkansas River to the Creek County line
	East Tulsa, Southwest Tulsa, and North Tulsa.
Mays	Entire County.
Rogers	Entire County.
Wagner	Entire County.
Oklahoma	Oklahoma City: an area bounded on the north by North 50th; on the east by Bryant Avenue; on the south by South 44th; and on the west by Meridian Avenue.
Green	Entire County.
Payne	Entire County.
Seminole	Entire County.
Cleveland	Entire County.
Logan	Entire County.
Potawatomi	Entire County.
	The Sac, Fox and Absentee Shawnee Districts of Potawatomi County.
	Potawatomi Reservation, extending north to the North Canadian River; south to the South Canadian River; west to the Indian Meridian Line; and east to the county line.
Seminole	Entire County.
Cherokee	Entire County.
Mayes	Entire County.
Craig	Entire County.
Oregon:	
Hood River	Entire County (also serves Klickitat County in Washington State).
Wasco	Entire County.
Jackson	City of Medford and metropolitan area, and the Illinois Valley.
Josephine	Entire County.
Multnomah	City of Portland: an area bounded by N.E. Skidmore to the north; N.E. Tillamook to the south; 82nd Street to the east; and the Willamette River to the west.
	City of Portland: an area bounded by the Willamette River on the west; the Columbia River on the north; Holgate Blvd on the south; and N.E. 122nd Ave on the east (excluding the Enterprise Zone between N.E. Skidmore and N.E. Tillamook Streets).
	City of Portland: an area bounded by Holgate Ave on the north; the Multnomah County line to the south; SE 45th St. to the west; and 122nd Ave. to the east. After 122nd, the service area extends north to Burnside and out to S.E 162nd Avenue (Lents Junction).
	An area bounded by the Columbia River on the north; Multnomah County line on the east; 122nd Street on the west until Burnside Street, then moving east to 162nd Street, and south to the Clackamas County line.
Umatilla	The communities of Pendleton, Hermiston, Umatilla, and Stanfield.
Marrow	City of Boardman.
Washington	City of Hillsboro.
Jefferson	Warm Springs Indian Reservation.
Pennsylvania:	
Allegheny	Hill District, Uptown, Upper Hill, Middle Hill, Lower Hill, South Oakland, North Oakland, Clairton, City of Clairton, West Mifflin, Wilson, Jefferson, Glassport, Elizabeth, Dravesburg, Sto-Rox, McKees Rocks Borough, Kennedy Township, Esplen, Neville Island, and Stowe Township.
	Bloomfield, East Hills, East Liberty, Friendship, Garfield, Homewood, Larimer, Lawrenceville, Lincoln-Lemington-Belmar, Morningside, Baldwin.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
	City of Pittsburgh including: Allentown, Arlington, Arlington Heights, Beltzhoover, Beechview, Brookline, Banksville, Carrick, Duquesne Heights, Glen Hazel, Greenfield, Hays, Hazelwood, Lincoln Place, Knoxville, Mt. Washington, Mt. Oliver, Overlook, St Clair Village, South Side Flats, South Side Slopes; and the County communities: Aspenwall. Blawnox, Cheswick, East Deer, Etna, Fox Chapel, Frazer, Harmar, Indiana, Millvale, Oakmont, O'Hara, Shaler, Sharpsburg, Springdale Borough, Springdale Township, Verona, West Deer.
Beaver	Entire County.
Bedford	Entire County.
Bradford	Entire County.
Tioga	Entire County.
Butler	Entire County.
Centre	Entire County.
Clearfield	Entire County.
Fayette	Entire County.
Fulton	Entire County.
Huntingdon	Entire County.
Indiana	Entire County.
Lackawanna	Entire County.
Wayne	Entire County.
Pike	Entire County.
Susquehanna	Entire County.
Lehigh	Entire County.
Luzerne	Entire County.
Mercer	Entire County.
Snynder	Entire County.
Union	Entire County.
Mifflin	Entire County.
Philadelphia	City of Philadelphia—an area bounded by the Schuylkill River; north to Girard Avenue; west on Girard to Parkside Avenue; north on Parkside Avenue to Belmont Avenue; south on Belmont to Westminster Avenue; west on Wesminster to 50th Street; south on 50th Street to Spruce Street; east on Spruce to 45th Street; and south on 45th Street to the Schuylkill River.
	City of Philadelphia—an area bounded by Pine Street on the north; Broad Street on the east; Philadelphia Naval Base on the south; and Schuylkill River on the west.
	City of Philadelphia—North Central Philadelphia Empowerment Zone: 6th Street to 23rd Street, and from Montgomery Street to Poplar Street.
	City of Philadelphia—An area bounded on the north by Allegheny Avenue; on the south by Norris Street; on the east by 5th Street; and on the west by 17th Street, excluding the North Philadelphia Empowerment Zone area.
	City of Philadelphia—Frankford Area.
Venango	Entire County.
Washington	Entire County.
Greene	Entire County.
Westmoreland	Entire County.
Dauphin	City of Harrisburg.
Rhode Island:	
Bristol	Bristol, Warren, and Barrington.
Newport	Entire County.
Providence	Town of East Providence.
	City of Cranston.
	City of Central Falls, South and Southwest Providence.
	Towns of Burrillville, Johnston, North Providence, Smithfield, North Smithfield, Glocester, Scituate, and Foster.
Kent	The City of Warwick and the towns of Coventry and West Warwick.
South Carolina:	
Bamberg	Olar, Bamberg City, Denmark, Ehrhardt.
Charleston	West Ashley, downtown Charleston, and Charleston Nech area.
Greenville	City of Greenville: Communities of Nicholtown (including the Jesse Jackson Town Homes), Woodland-Pierce Homes, and Parker District (including Monaghan, San Souci).
Anderson	Honeapath.
Pickens	City of Pickens.
Greenville	Pleasant Valley.
Lancaster	Entire County.
Spartanburg	Entire County.
Sumter	City of Sumter: Sumter School District, Maysville, Dalzell, Wedgefield, Sahw Air Force Base, Pinewood, Rembert, within the eastern section of Sumter County.
Beauford	St. Helena.
Jasper	Robertville.
Greenwood	Greenwood City.
Saluda	Saluda City.
South Dakota:	
Brookings	Entire County.
Codington	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Hamlin	Entire County.
Lake	Entire County.
Minnehaha	Entire County.
Moody	Entire County.
McCook	Entire County.
Clark	Entire County.
Deuel	Entire County.
Grant	Entire County.
Kingsbury	Entire County.
Miner	Entire County.
Butte	Towns of Belle Fourche, Fruitdale, Newell, Nisland and Vale.
Harding	Towns of Buffalo and Reva.
Perkins	Towns of Bison and Lemmon.
Hughes	Entire County.
Hyde	Entire County.
Jones	Entire County.
Mellette	Entire County.
Stanley	Entire County.
Sully	Entire County.
Meade	Cities of Black Hawk and Sturgis.
Lawrence	Cities of Deadwood, Lead, Spearfish.
Custer	City of Custer.
Fall River	City of Hot Springs.
Haakon	City of Phillip.
Jackson	City of Kadoka.
Pennington	The cities of Box Elder, Ellsworth Air Force Base, Rapid Valley, Rapid City and a 15 mile radius.
	Rapid City and the communities of Box Elder and Rapid Valley within the incorporated limits of Rapid City.
Jackson	Pine Ridge Reservation.
Shannon	Pine Ridge Reservation.
Robert	Lake Traverse Reservation.
Day	Lake Traverse Reservation.
Marshall	Lake Traverse Reservation.
Clay	Entire County.
Lincoln	Entire County.
Turner	Entire County.
Union	Entire County.
Tennessee:	
Anderson	Andersonville, Briceville, Claxton, Clinton, Dutch Valley, Fairview, Grand Oaks, Lake City, Norris, Norwood.
Carroll	Entire County.
Fayette	Entire County.
Lauderdale	Entire County.
Madison	Entire County.
Obion	Entire County.
Tipton	Entire County.
Bedford	Shelbyville city limits and 10 miles around Shelbyville.
Lawrence	Lawrenceburg city limits and 10 miles around Lawrenceburg.
Giles	Pulaski city limits and 10 miles around Pulaski.
Hamilton	Communities of Soddy—Daisy, Cedar Hill, and the Avondale area of the City of Chattanooga.
Knox	North Knoxville.
Loudon	Entire County.
Roane	Entire County.
Shelby	Frayse, North Memphis, South Memphis, Midtown, Vincent, Alabaster, Columbiana.
Weakley	Entire County.
Gibson	Entire County.
Henry	Entire County.
Williamson	Franklin.
Wilson	Lebanon.
Cannon	Woodbury.
Cheatham	Ashland City.
Robertson	Springfield.
Rutherford	Murfreesboro and Smyrna.
Summer	Gallatin.
Trousdale	Hartsville.
Morgan	Entire County.
Tazewell	Campbell, Hancock, Claiborne, Scott.
Texas:	
Bexar	City of San Antonio—an area on the westside of San Antonio bounded by Woodlawn on the north; U.S. Highway 90 on the south; Interstate 35 on the east; and Callahan on the west.
	The communities of Fredericksburg II, Circle North, New Westwood, Terrell Plaza, Fort Sam and Mount Zion.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Brazos	Entire County.
Brooks	Entire County.
Jim Wells	Entire County.
Kleberg	Entire County.
Brown	Entire County.
Burnet	An area bounded to the east by the City of Tow; to the north by County Road 206; to the west by the City of Bertram; and to the south by Park Road off State Highway 281.
Williamson	School district boundaries of the cities of Taylor, Georgetown, and Leander as described as: (1) City of Taylor—an area bounded to the east by Morning Glory and Mariposa; to the north by State Highway 95 and the San Gabriel River; to the west by County Road 3349; and to the south by Janick Lane. (2) City of Georgetown—an area bounded to the east by San Gabriel River and State Highway 95; to the north by State Highway 195; to the west by County Road 241; and to the south by County Road 111. (3) City of Leander—an area bounded to the east by County Road 1431 and Sam Bass Road; to the north by State Highway 29; to the west by County Road 1431 West to City of Jonestown; and to the south by County Road 2222 and City Park Road.
Cameron	Entire County.
Willacy	Entire County.
Cochran	Entire County.
Garza	Entire County.
Collin	McKinney Independent School District.
Grayson	Entire County.
Rockwall	Entire County.
Dallas	The communities of: (1) Pleasant Grove—an area bounded by I–635 on the north and east; I–45 on the south; and I–30 on the west. (2) West Dallas—an area bounded by the Trinity River on the north; I–30 on the south; Jefferson Boulevard on the east; and Loop 12 on the west. (3) Irving—an area bounded by Walnut Hill Rd on the north; Hunter Ferrel St. on the south; Walton Walker (Loop 12) on the east; and Beltline Rd on the west. (4) North Oak Cliff—an area bounded by I–30 on the north; Camp Wisdom Road on the south; I–35 on the east; and Duncanville Road on the west.
El Paso	Rural communities of Fabens, San Elizario, Clint, Canitillo, and the following areas in the city limits of El Paso: (1) Socorro/Sparks—an area bounded by Horizon City on the north; I–10 on the south; Bufford Road on the east; and Avenue of the Americas on the south. (2) Northeast—an area bounded by New Mexico State line on the north; Montana Avenue on the south; Loop 375 on the east; and Patriot on the west. (3) Ysleta—an area bounded by I–10 on the north; Border Freeway on the south; Avenue of the Americas on the east; and Delta Drive on the west. (4) Central Area—an area bounded by Montana Avenue on the north; Mexico border on the south; Alameda Avenue on the east; and Paisano Avenue on the west. (5) Canutillo—an area bounded by Vinton Road to the north; Sunland Park to the south; I–10 on the east and the Rio Grande River on the west.
Fort Bend	Entire County.
Gray	Entire County.
Hutchinson	Entire County.
Randall	Entire County, except teen parents residing within Amarillo School District Boundaries. Teen parents residing within Amarillo School District Boundaries.
Potter	Entire County, except teen parents residing within Amarillo School District Boundaries. Teen parents residing within Amarillo School District Boundaries.
Harris	City of Houston: an area bordered by Tidwell on the north; Hardy and Maury on the east; Yale and Studewood on the west; and IH–10 on the south (also know as Fifth Ward). City of Humble: an area bordered on the north by Montgomery County line; on the east by the middle of Lake Houston; on the south by Beltway 8; and on the west by McKay Boulevard up to Spring Creek where it intersects the Montgomery County line. Communities of Galena Park and Jacinto City within the City of Houston: an area bordered on the north by the East Fork of the San Jacinto River; on the east by Liberty County; on the south by the north side of Indian Shores; and on the west to the middle of Lake Houston. Within Harris County: (1) Gulfton Area—an area bounded by Richmond Street on the north; S. Braeswood Street on the south; Newcastle on the east; and S. Gessner on the west; (2) Spring Branch—an area bounded by Highway 290 on the north; I–10 on the south; Wirt Road (Wirt to Kempwood, Kempwood to Bingle, Bingle to Highway 290) on the east; and Blalock/Campbell Road on the west. Within Harris County, an area bordered by: (1) Loop 610 on the north; Loop 610 West to North to East on the south; Hardy Road on the east; and Studewood Street on the west; (2) An area bounded by Tidwell Road on the north; Loop 610 on the south; Hardy Road on the east; and North Main Street on the west;

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
	(3) An area bounded by E. Mt. Houston Road; Lynnfield Road on the south; Hirsch Road on the East; and Hardy Road on the west.
Hays	Entire County.
Caldwell	Entire County.
Hood	Cities of Granbury, Cresson, Lipan, Paluxy, and Thorspring.
Erath	Entire County.
Palo Pinto	Entire County.
Lubbock	City of Lubbock: The Cherry Point neighborhood bordered by Loop 289 and East Municipal Drive on the north; East Broadway on the south; East Idalou Road on the east; and Yellowhouse Canyon on the west.
Mclennan	Eligible residents of an empowerment zone in the City of Waco identified as East Waco, and nearby north and south sections of the city.
Houston	Entire County.
Nacogdoches	Entire County.
Nueces	Entire County.
Scurry	Entire County.
Starr	Rio Grande City.
Duval	City of San Diego.
Jim Hogg	City of Hebronville.
Zapata	Zapata City.
Taylor	Abilene Independent School District boundaries.
Titus	Entire County.
Tom Green	Entire County.
Travis	Entire County.
Uvalde	Entire County.
Zavala	Entire County.
Brazoria	Entire County.
Nolan	Entire County.
Tarrant	Entire County.
Bowie	Entire County.
Utah:	
Carbon	City of Price.
Grand	City of Moab.
San Juan	City of Blanding.
Davis	Davis County School District Boundary.
Utah:	Entire County.
Box Elder (also see Franklin County, Idaho).	Brightman City, Fielding, Garden City, Garland, Thatcher, and Tremonton.
Cache (also see Franklin County, Idaho).	College Ward, Hyde Park, Hyrum, Logan, Mendon, Millville, Nibley, North Logan, Richmond, River Heights, Smithfield, and Wellsville.
Navajo Nation (also see AZ, CO, & NM).	Navajo Reservation, Navajo School Board.
Washington (also see Colorado City in Mohave County, AZ).	St. George and Hurricane.
Vermont:	
Caledonia	Entire County.
Essex	Entire County.
Orleans	Entire County.
Lamoille	Entire County.
Orange	Entire County.
Washington	Entire County.
Windham	Entire County.
Virginia:	
Buchanan	Entire County.
Dickerson	Entire County.
Russell	Entire County.
Washington	Entire County.
Fairfax	Cities of Fairfax and Falls Church and South Fairfax County from I–495 to Prince William County.
City of Alexandria	City of Alexandria—Rt. 1 Corridor.
Isle of Wight	Entire County.
Southhampton	Entire County.
City of Franklin	Entire City.
City of Suffolk	Entire City.
York	Entire County.
James City County	Entire County.
City of Williamsburg	Entire City.
Arlington	Entire County.
Loudoun	Entire County.
Prince William	Entire County.
Roanoke	City of Roanoke.
Newport News	City of Newport News—from Jefferson Street east.
Wise	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Orange	Entire County.
Washington:	
Asotin (also see Nez Perce County, ID).	Entire County.
Chelan	Entire County.
Douglas	Entire County, except for Community of Bridgeport.
	Bridgeport.
Yakima	City of Yakima.
	Towns of Grandview, Sunnyside, Mabton, Granger, Toppenish and White Swan.
Clark	Entire County.
Ferry	Entire County.
Pend Oreille	Entire County.
Steven	Entire County.
Grant	Entire County.
Island	Entire County.
Skagit	Entire County.
San Juan	Entire County.
King	City of Seattle: Ballard and West Seattle—an area bounded on the east by Lake Washington; on the west by Puget Sound; on the north by 145th Street; on the southwest by Roxbury Street; on the southeast by Juniper Street (excluding the garden communities of Holly Park, Yesler Terrace, Rainier Vista and High Point).
	City of Seattle: Central District of Seattle bounded on the north by East Madison St and Lake Washington Blvd; on the south by Interstate 90; on the east by Lake Washington; and on the west by Rainier Avenue South, South Main Street, Interstate 5, James Street and 12th Avenue.
	City of Seattle: Yesler Terrace, Holly Park, High Point, and Rainier Vista Public Housing Districts.
	Communities of Kent, Renton, Auburn, Skyway, Tukwilla, Southeast King County, and Federal Way.
Walla Walla	The City of Walla Walla, Farm Labor Homes Community and College Place.
Kitsap	South Kitsap School District (Discovery High School), students who attend Olympic College, and City of Port Orchard.
	Cities of Bremerton, West Bremerton and Poulsbo.
	Port Madison Indian Reservation.
	Port Gamble S'Klallam Reservation.
Klickitat (also see Hood River and Wasco Counties, OR).	Entire County.
Pierce	School Districts: Clover Park; Bethel; Peninsula; the teen parents attending the Tacoma School District and the Woman's Correctional Center in Purdy, Washington.
Snohomish	City of Everett.
Spokane	The City of Spokane and surrounding metropolitan area; and students attending Community Colleges in the City of Spokane.
Whatcom	Entire County.
Jefferson	Entire County.
Clallam	Entire County.
West Virginia:	
Brooke	Entire County.
Marshall	Entire County.
Wetzel	Entire County.
Cabel	Cities of Huntington and Barboursville.
Lincoln	Towns of Harts and Ranger.
Wayne	Towns of Crum and Fort Gay.
Marion	City of Fairmont.
Randolph	Entire County.
Tucker	Entire County.
Preston	Entire County.
Monongalia	Entire County.
Wyoming	Entire County.
Wisconsin:	
Adams	Entire County.
Columbia	Entire County.
Dodge	Entire County.
Juneau	Entire County.
Sauk	Entire County.
Dane	Entire County.
Barron	Entire County.
Chippewa	Entire County.
Dunn	Entire County.
Grant	Entire County.
Richland	Entire County.
Kenosha	City of Kenosha—neighborhoods of Wilson Heights and Bain.
Brown	Entire County.
Manitowac	Entire County.
Forest	Entire County.
Oneida	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Vilas	Entire County.
Pierce	Entire County.
Polk	Entire County.
Pepin	Entire County.
St. Croix	Entire County.
Milwaukee	City of Milwaukee—an area bounded on the north by Capital Drive; on the east by Hwy 43; on the south by Wisconsin Ave.; and on the west by Sherman.
Waukesha	Entire County.
Kesheua	Menominee Reservation.
Rock	Entire County.
Bayfield	Red Cliff Reservation.
Vilas	Lac du Flambeau Reservation.
Wyoming:	
Big Horn	Entire County.
Hot Springs	Entire County.
Washakie	Entire County.
Converse	Entire County.
Goshen	Entire County.
Natrona	Entire County.
Niobrara	Entire County.
Platte	Entire County.
Fremont	Wind River Indian Reservation.
Campbell	Entire County.
Teton	Entire County.
Sublette	Entire County.
Laramie	Entire County.
District of Columbia	(1) In Ward One, an area bounded on the northeast by Spring Road; on the northwest by Piney Branch Parkway; on the east by Michigan Avenue to Florida Avenue; on the southeast by S Street; and on the west by Rock Creek.
	(1) In Ward Two an area bounded on the northeast by New Jersey, Florida Avenue and S Street; on the northwest by Florida Avenue; on the east by Florida Avenue and Southwest Freeway; on the southeast by the Anacostia River; and on the west by the Potomac River.
	(1) In Ward Four an area bounded on the northeast by Eastern Avenue; on the northwest by Western Avenue; on the southeast by Michigan Avenue; and on the southwest by Rock Creek.
	(2) In Ward Five an area bounded on the northeast by Eastern Avenue; on the northwest by South Dakota; on the southeast by the Anacostia River; on the southwest by Florida Avenue; and on the west by Harewood Road.
	Sections of Wards One, Two and Four, which includes the areas of Shepherd Park, Upper Cordoza, Adams Morgan, and Mount Pleasant.
Commonwealth of Puerto Rico:	
Municipality of Carolina	Entire Municipality.
Municipality of Cayey	Entire Municipality.
Municipality of Cidra	Entire Municipality.
Municipality of Luquillo	Entire Municipality.
Municipality of Trujillo Alto	Entire Municipality.
Municipality of Humacao	Entire Municipality.
Municipality of Ceiba	Entire Municipality.
Municipality of Juncos	Entire Municipality.
Municipality of Loiza	Entire Municipality.
Municipality of Canovanas	Barrio Cuboy in Canovanas.
Municipality of Rio Grande	Entire Municipality.
Municipality of Naguabo	Entire Municipality.
Municipality of Toa Baja	Entire Municipality.
Municipality of Catano	Bajo Costo.
	Barrio Palmas in the Municipality of Catano.
Municipality of Coamo	Las Flores in the Municipality of Coamo.
Municipality of Vega Alta	Vega Alta (Muchauchal and Santa Ana).
Municipality of San Juan	Cantera in the Municipality of San Juan.
	Barrios: Hato Rey Norte and the sub-barrios of Puerto Nuevo, Nemesio R. Canales Public Housing Project.
Municipality of Ponce	Entire Municipality.
Municipality of Santa Isabel	Entire Municipality.
Municipality of Bayamon	Entire Municipality.
Municipality of Barceloneta	Entire Municipality.
Municipality of Guaynabo	Entire Municipality.
Municipality of Sabana Grande	Entire Municipality.
Municipality of Caguas	Entire Municipality.
Municipality of San Sebastian	Entire Municipality.
Municipality of Arecibo	Entire Municipality.
Virgin Islands: Island of St. Croix	St. Croix.

[FR Doc. 02–5948 Filed 3–13–02; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0070]

Agency Information Collection Activities; Proposed Collection; Comment Request; Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) 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 regulations for in vivo radiopharmaceuticals used for diagnosis and monitoring.

DATES: Submit written or electronic comments on the collection of information by May 13, 2002.

ADDRESSES: Submit electronic comments on the collection of information to *http://accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm.* Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

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 requests 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, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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.

Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring (OMB Control No. 0910–0409)—Extension

FDA is requesting OMB approval of the information collection requirements contained in 21 CFR 315.4, 315.5, and 315.6. These regulations require manufacturers of diagnostic radiopharmaceuticals to submit information that demonstrates the safety and effectiveness of a new diagnostic radiopharmaceutical or of a new indication for use of an approved diagnostic radiopharmaceutical.

In response to the requirements of section 122 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), FDA published a final rule (64 FR 26657, May 17, 1999) amending its regulations by adding provisions that clarify FDA's evaluation and approval of in vivo radiopharmaceuticals used in the diagnosis or monitoring of diseases. The regulation describes the kinds of indications of diagnostic radiopharmaceuticals and some of the criteria that the agency would use to evaluate the safety and effectiveness of a diagnostic radiopharmaceutical under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and section 351 of the Public Health Service Act (42 U.S.C. 262) (the PHS Act). Information about the safety or effectiveness of a diagnostic radiopharmaceutical enables FDA to properly evaluate the safety and effectiveness profiles of a new diagnostic radiopharmaceutical or a new indication for use of an approved diagnostic radiopharmaceutical.

The rule clarifies existing FDA requirements for approval and evaluation of drug and biological products [1] already in place under the authorities of the act and the PHS act. The information, which is usually submitted as part of a new drug application (NDA) or biologics license application (BLA) or as a supplement to an approved application, typically includes, but is not limited to, nonclinical and clinical data on the pharmacology, toxicology, adverse events, radiation safety assessments, and chemistry, manufacturing, and controls. The content and format of an application for approval of a new drug are set forth in § 314.50 (21 CFR 314.50). Under 21 CFR part 315, information required under the act and needed by FDA to evaluate the safety and effectiveness of in vivo radiopharmaceuticals still needs to be reported.

Based on the number of submissions (that is, human drug applications and/or new indication supplements for diagnostic radiopharmaceuticals) that FDA received during fiscal years 2000 and 2001, FDA estimates that it will receive approximately two submissions annually from two applicants. The hours per response refers to the estimated number of hours that an applicant would spend preparing the information required by the regulations. Based on FDA's experience, the agency estimates the time needed to prepare a complete application for a diagnostic radiopharmaceutical to be approximately 10,000 hours, roughly one-fifth of which, or 2,000 hours, is estimated to be spent preparing the portions of the application that would be affected by these regulations. The regulation does not impose any additional reporting burden for safety and effectiveness information on diagnostic radiopharmaceuticals beyond the estimated burden of 2,000 hours because safety and effectiveness information is already required by § 314.50 (collection of information approved by OMB until February 28, 2002, under OMB Control No. 0910–

[1] The information collection requirements for biological products are no longer submitted for approval to OMB in this package, but are included under OMB Control No. 0910–0124.

0001). In fact, clarification in these regulations of FDA's standards for evaluation of diagnostic radiopharmaceuticals is intended to streamline overall information collection burdens, particularly for diagnostic radiopharmaceuticals that may have well-established, low-risk safety profiles, by enabling manufacturers to tailor information submissions and avoid unnecessary clinical studies. Table 1 of this document contains estimates of the annual reporting burden for the preparation of the safety and effectiveness sections of an application that are imposed by existing regulations. The burden totals do not include an increase in burden. This estimate does not include the actual time needed to conduct studies and trials or other research from which the reported information is obtained.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
315.4, 315.5, and 315.6	2	1	2	2,000	4,000
Total					4,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 5, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–6095 Filed 3–13–02; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1672]

Ashford Blood Bank, Inc.; Revocation of U.S. License No. 0740–001

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the biologics license (U.S. License No. 0740–001) issued to Ashford Blood Bank, Inc., for the manufacture of Whole Blood and Red Blood Cells. Ashford Blood Bank, Inc., did not respond to a notice of opportunity for a hearing on a proposal to revoke its license.

DATES: The revocation of the biologics license (U.S. License No. 0740–001) is effective March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph L. Okrasinski, Jr., Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is revoking the biologics license (U.S. License No. 0740–001) issued to Ashford Blood Bank, Inc., Ashford Medical Center, suite 401–402, Santurce, PR 00907, for the manufacture of Whole Blood and Red Blood Cells. FDA initiated proceedings to revoke the biologics license because: (1) Authorized FDA employees were unable to gain access to either of the establishment's locations for the purpose of carrying out a required inspection of the facility as mandated under § 600.21 (21 CFR 600.21), and (2) manufacturing of products had been discontinued to an extent that a meaningful inspection or evaluation could not be made. In a certified, return-receipt letter dated October 28, 1997, FDA notified an authorized official of the firm that FDA had suspended the establishment's biologics license for the manufacture of Whole Blood and Red Blood Cells at its facilities at Santurce, PR, and Bayamon, PR. This action was based on the fact that significant deviations from the regulations were noted by FDA's San Juan district office during inspections of the facilities conducted August 19, 1997, through September 17, 1997, and September 9, 1997, through September 17, 1997, respectively. FDA's San Juan district office attempted to conduct additional inspections of the two Ashford facilities. On May 1, 1998, FDA investigators attempted to inspect the satellite collection facility at Bayamon, PR, but found that the facility was no longer in operation, and the manufacturing of Whole Blood and Red Blood Cells had been discontinued. On November 23, 1999, FDA investigators attempted to inspect the main facility in Santurce, PR, but found that the facility was no longer in operation and the manufacturing of Whole Blood and Red Blood Cells had been discontinued.

In certified, return-receipt letters dated April 13, 2000, sent to the establishment's facility at Santurce, PR, and also to the Ashford Blood Bank, Inc., P.O. Box 195034, San Juan, PR, 00919, FDA notified an authorized official of the firm that FDA's attempt to conduct inspections of the two facilities at Santurce, PR and Bayamon, PR were unsuccessful because the facilities were no longer in operation and the manufacture of Whole Blood and Red Blood Cells had been discontinued. The letter advised the establishment that, under § 601.5(b)(l) and (b)(2) (21 CFR 601.5(b)(1) and (b)(2)) (now codified as § 601.5(b)(1)(i) and (b)(1)(ii)), when FDA finds that authorized employees have been unable to gain access to an establishment for the purpose of carrying out an inspection required under § 600.21, or the manufacturing of products or of a product has been discontinued to an extent that a meaningful inspection could not be made at the establishment, FDA may initiate proceedings for license revocation. FDA also stated that a meaningful inspection could not be made at the establishment's facilities and issued to the establishment a notice of FDA's intent to revoke U.S. License No. 0740–001 and announced its intent to offer an opportunity for a hearing.

Under § 12.21(b) (21 CFR 12.21(b)), FDA published in the **Federal Register** of February 6, 2001 (66 FR 9087), a notice of opportunity for a hearing on a proposal to revoke the biologics license of Ashford Blood Bank, Inc. In the notice, FDA explained that the proposed license revocation was based on the inability of authorized FDA employees to conduct a meaningful inspection of the establishment because it was no longer in operation, and noted that documentation in support of license revocation had been placed on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The notice provided the establishment 30 days to submit a written request for a hearing and 60 days to submit any data and information

justifying a hearing. The notice provided other interested persons with 60 days to submit written comments on the proposed revocation. The establishment did not respond within the 30-day time period with a written request for a hearing, and under § 12.21(b), the 30-day time period prescribed in the notice of opportunity for a hearing may not be extended. No other comments were received.

Accordingly, under 21 CFR 12.38, section 351 of the Public Health Service Act (42 U.S.C. 262), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the biologics license (U.S. License No. 0740–001) issued to Ashford Blood Bank, Inc., is revoked, effective March 14, 2002.

Dated: March 6, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–6096 Filed 3–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA 668–02–1610–DO–083A]

Monument Advisory Committee Meeting Schedule

AGENCY: Bureau of Land Management, Interior; United States Forest Service, Agriculture.

ACTION: Notice of meetings.

SUMMARY: The Bureau of Land Management (BLM) and United States Forest Service (USFS) announces the schedule of meetings for the Advisory Committee to the Santa Rosa and San Jacinto Mountains National Monument (hereinafter referred to as ''National Monument''). The meetings will be held on the following dates:

Saturday, April 6, 2002
Saturday, June 1, 2002
Saturday, August 3, 2002
Saturday, October 5, 2002
Saturday, December 7, 2002
Saturday, February 1, 2003

The meetings will be held at the Palm Desert City Hall Council Chambers, located at 73–510 Fred Waring Drive, Palm Desert, California, 92260. The meetings will take place from 9 a.m. until 4:00 p.m. There will be a half hour dedicated to public input during both the first half hour of the meetings and at the last half hour of the meetings. A sign up sheet will be located at the meeting room on the day of the meeting. Speakers wishing to comment publicly should sign the public comment sign-in sheet provided at the location of the meetings and provide a written copy of their statement. All committee and subcommittee meetings, including field examinations, will be open to the general public, including representatives of the news media. Any organization, association, or individual may file a statement with or appear before the committee and its subcommittees regarding topics on a meeting agenda—except that the chairperson or the designated federal official may require written comments to the Advisory Committee. The meetings will have agendas developed and available to the public prior to the meeting date. The agendas for each meeting will be located on the Bureau of Land Management web page for the Santa Rosa San Jacinto National Monument (*http://www.ca.blm.gov/palmsprings/*.) The subject matter of each meeting will focus on the development and implementation of the Santa Rosa San Jacinto Mountains National Monument Management Plan.

The Monument Advisory Committee (MAC) is a committee of citizens appointed to provide advice to the BLM and USFS with respect to preparation and implementation of the management plan for the National Monument as required in the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431nt). The act authorized establishment of the MAC with representative members from State and local jurisdictions, the Agua Caliente Band of Cahuilla Indians, a natural science expert, local conservation organization, local developer or building organization, the Winter Park Authority and a representative from the Pinyon Community Council.

The meetings will be open to the public with attendance limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretations or other reasonable accommodations should notify the contact person listed below in advance of the meeting. Persons wishing to make statements will need to sign up at the meeting location.

DATES: April 6, 2002; June 1, 2002; August 3, 2002; October 5, 2002; December 7; 2002; February 1, 2003; All meetings will take place from 9 a.m. to 4 p.m with a morning public comment period from 9 to 9:30 a.m. and an afternoon public comment period from 3:30 to 4 p.m.

ADDRESSES: The meetings will be held in the Council Chambers of the Palm Desert City Hall, 73–510 Fred Waring Drive, Palm Desert, California, 92260.

FOR FURTHER INFORMATION CONTACT: Written comments should be sent to Miss Danella George, Santa Rosa San Jacinto Mountains National Monument Manager, Bureau of Land Management, P.O. Box 581260, North Palm Springs, CA 92258; or by fax at (760) 251–4899 or by e-mail at *dgeorge@ca.blm.gov.* Information can be found on our webpage: *http://www.ca.blm.gov/palmsprings/.* Documents pertinent to this notice, including comments with the names and addresses of respondents, will be available for public review at the Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Santa Rosa and San Jacinto Mountains National Monument was established by act of Congress and signed into law on October 24, 2000. The National Monument was established in order to preserve the nationally significant biological, cultural, recreational, geological, educational and scientific values found in the Santa Rosa and San Jacinto Mountains. This legislation established the first monument to be jointly managed by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 affects only Federal lands and Federal interests located within the established boundaries.

The 272,000 acre Monument encompasses 86,400 acres of Bureau of Land Management lands, 64,400 acres of Forest Service lands, 23,000 acres of Agua Caliente Band of Cahuilla Indians lands, 8,500 acres of California Department of Parks and Recreation lands, 35,800 acres of other State of California agencies lands, and 53,900 acres of private land. The BLM and the Forest Service will jointly manage Federal lands in the National Monument in coordination with the Agua Caliente Band of Cahuilla Indians, other federal agencies, state agencies and local governments.

Dated: February 7, 2002.

Danella George,

Designated Federal Official, National Monument Manager.

Laurie Rosenthal,

District Ranger, San Jacinto Ranger District, San Bernardino National Forest.

[FR Doc. 02–6165 Filed 3–13–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; GPO–02–0046; WAOR–22434, WAOR–22369]

Public Land Order No. 7515; Modification of Secretarial Orders Dated October 10, 1905 and February 2, 1912; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies two Secretarial orders insofar as they affect 97.95 acres of public lands withdrawn for the Bureau of Reclamation's Yakima-Tieton Reclamation Project. The action will open the lands to exchange only.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6189.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders dated November 10, 1905 and February 2, 1912, which withdrew lands for the Bureau of Reclamation's Yakima-Tieton Reclamation Project, are hereby modified insofar as they affect the following described public lands to allow for exchange in accordance with Section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended, 43 U.S.C. 1716 (1994):

Willamette Meridian

T. 14 N., R. 16 E.,
Sec. 12, SE¼SW¼.
T. 12 N., R. 17 E.,
Sec. 6, lot 10.
T. 13 N., R. 17 E.,
Sec. 10, SE¼NE¼ and E½E½SE¼SW¼NE¼;
Sec. 20, NE¼NW¼NW¼.

The areas described aggregate 97.95 acres in Yakima County.

2. The lands described in paragraph 1 are hereby made available for exchange in accordance with section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended by the Federal Land Exchange Facilitation Act of 1988, 43 U.S.C. 1716 (1994), subject to valid existing rights, the provisions of existing withdrawals, other segregation of record, and the requirements of applicable law.

Dated: February 15, 2002.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–6119 Filed 3–13–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA 668–02–1610–DO–083A]

Notice of intent To Prepare a Land and Resource Management Plan

AGENCY: Bureau of Land Management; Palm Springs-South Coast Field Office, and the United States Forest Service, San Bernardino National Forest.

ACTION: Notice of intent to prepare a Land and Resource Management Plan (LRMP) for the Santa Rosa and San Jacinto Mountains National Monument, designated by Congress on October 24, 2000. This action will require a single Environmental Impact Statement (EIS). The planning area is located in Riverside County, California.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) and United States Forest Service (USFS) intend to prepare an LRMP with an associated EIS for the Santa Rosa and San Jacinto Mountains National Monument located within the BLM Palm Springs-South Coast Field Office and the San Bernardino National Forest. This planning activity encompasses approximately 150,800 acres of Federally managed public land. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), the Forest and Rangeland Renewable Resources Planning Act of 1974, the National Forest Management Act of 1976, the Santa Rosa and San Jacinto Mountains National Monument Act of 2000, and BLM and USFS management policies. The BLM and USFS will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning issues, develop planning criteria, and will include an evaluation of the existing BLM and USFS land and resource management plans in the context of the needs and interests of the public and conservation of natural and cultural resources specified in the legislation.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria may be submitted in writing to the address listed below. All public meetings will be announced through the local news media, newsletters, and the BLM web site (*www.ca.blm.gov*) at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

Public Participation: Public meetings will be held throughout the plan scoping and document preparation period. In order to ensure local community participation and input, public meeting locations will be rotated among the communities located within the Santa Rosa and San Jacinto Mountains and the cities of the Coachella Valley, Riverside County. Meeting sites will also be provided throughout southern California commensurate with interest in the National Monument. Early and ongoing participation is encouraged and will help determine the future management of Federally managed public lands within the Santa Rosa and San Jacinto Mountains National Monument. In addition to the ongoing public participation process, formal opportunities for public participation will be provided through comment on the alternatives and upon publication of the draft LRMP/EIS. Written comments will be accepted and considered throughout the entire planning process.

ADDRESSES: Written comments should be sent to Mr. James G. Kenna—Field Manager, Palm Springs-South Coast Field Office, Bureau of Land Management, P.O. Box 581260, North Palm Springs, CA 92258; or by fax at (760) 251–4899 or by email at *cdunning@ca.blm.gov.* Documents pertinent to this proposal, including comments with the names and addresses of respondents, will be available for public review at the Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours 7:45 a.m. to 4:30 p.m.,

Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Ms. Connell Dunning at (760) 251–4817, *cdunning@ca.blm.gov*, or Elena Misquez at (760) 251–4810, *emisquez@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: The creation of the Santa Rosa and San Jacinto Mountains National Monument along with the changing needs and interests of the public necessitates a separate stand-alone plan for the Monument. This action requires a maintenance action to BLM's California Desert Conservation Area Plan (as amended in 1980) to change its planning boundary and an amendment to the USFS's San Bernardino National Forest Land and Resource Management Plan. A management plan for the Santa Rosa and San Jacinto Mountains National Monument will facilitate coordination and efficiency between the BLM and USFS as joint Federal leads, and to focus collaborative efforts with state and local government, the Agua Caliente Band of Cahuilla Indians and interested public. This joint BLM–USFS planning document will require a single EIS and two separate Records of Decision (ROD).

Preliminary issues and management concerns have been identified by BLM and USFS personnel, other agencies, and in meetings with individuals and user groups. The preliminary issues identified thus far represent the USFS and BLM's knowledge to date on the existing issues and concerns with current management, but are not limited to these. The major issue themes that will be addressed in the plan effort include:

- Integrating monument management with community, tribal, and other agency needs.
- Recreation/visitor use and safety.
- Access and transportation on the public lands; management and protection of public land resources; and balancing multiple uses.

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan.
2. Issues resolved through policy or administrative action.
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase.

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in outdoor recreation, archaeology, paleontology, wildlife and plants, lands and realty, hydrology, soils, geographic information systems, rangeland management, minerals and geology, forestry, sociology and economics. Where necessary, outside expertise may be used.

Dated: October 11, 2001.

Danella George,

Acting Field Manager, Bureau of Land Management.

Gene Zimmerman,

Forest Supervisor, Forest Service, USDA.

[FR Doc. 02–6166 Filed 3–13–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities Under OMB Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of data collection submission.

SUMMARY: In compliance with the Paperwork Reduction act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 15, 2002.

ADDRESSES: Comments on this information collection should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington, DC 20503. A copy of your comments should also be directed to the Bureau of Reclamation, Pacific Northwest Regional Office, Attention Ms. Vicki Kellerman, 1150 N. Curtis Road, Suite 100, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed collection of information form, contact Ms. Vicki Kellerman at (208) 378–5326.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of Reclamation's functions, including whether the information will have practical use; (b) the accuracy of Reclamation's estimated time and cost burdens of the proposed collection of information, including the validity of the methodoly and assumptions used; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including increased use of automated collection techniques or other forms of information technology.

Title: Ririe Reservoir Recreation Survey.

Abstract: Ririe Reservoir is located on Willow Creek, a minor tributary of the Snake River in Bonneville County of eastern Idaho. Ririe Reservoir has recreation attributes that serve Idaho Falls, Ririe, and southeastern Idaho, as well as out-of-state visitors. Primary summer activities consist of boating, swimming, fishing, camping, and picnicking. In general the survey will be used to determine carrying capacity for recreation uses on both Reclamation lands and water, and necessary management actions related to recreation, as identified in the Resource Management Plan for this reservoir. Further, the survey will determine if and when boat ramps, docks, trails, parking, and other facilities need to be expanded for recreation during the next 10 years and if the expansion can be accomplished without detriment to natural, recreational, and cultural resources.

Description of respondents: Ririe Reservoir recreationists from Idaho Falls, Ririe, southeastern Idaho, and an indeterminate diversity of out-of-state visitors to Ririe Reservoir.

Frequency: This is a one-time voluntary survey.

Estimated completion time: An average of 30 minutes per respondent.

Annual responses: 250 respondents.

Annual burden hours: 125.

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. Reclamation will display a valid OMB control number on the forms.

The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on December 13, 2001 (66 FR 64454). Reclamation did not receive any comments on this collection of information during the comment period.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Jerrold D. Gregg,

Area Manager.

[FR Doc. 02–6113 Filed 3–13–02; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: 60-day notice of information collection under review: new collection; Domestic Preparedness Training Evaluation and Follow-up.

The Department of Justice, Office of Justice Programs, Office for Domestic Preparedness has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until May 13, 2002.

If you have comments, suggestions, or need a copy of the proposed information collection instrument or additional information, please contact Patricia A. Malak, 202–616–3461, Office for Domestic Preparedness, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposal collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information:

(1) Type of information collection: New collection

(2) The title of the form/collection: Domestic Preparedness Training Evaluation and Follow-up.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: The Office for Domestic Preparedness, Office of Justice Programs, U.S. Department of Justice is sponsoring the collections. A form number has not been assigned.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals who participate in Office for Domestic Preparedness-sponsored training other: None.

Abstract: The data collection effort is designed to obtain feedback from participants, who attend Office for Domestic Preparedness-sponsored training, on enhanced knowledge and/or skills, course improvements, and actions to use the information to improve personal, agency, or jurisdictional preparedness to respond to a terrorism incident. Approximately 4 months after the training, a sample of participants will be asked to complete a follow-up survey on how useful the training has been to them in performing their job actions they have taken to enhance response capacities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply.* It is estimated that approximately 21,390 respondents will be asked to complete the training evaluation forms and that will take approximately 15 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete evaluation forms is approximately 5,347 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530– or via facsimile at (202) 514–1590.

Dated: March 8, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–6109 Filed 3–13–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Nominations for Vacancy of Unexpired Term of Investment Counseling Member

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 20 U.S.C. 1142, provides for the establishment of an ''Advisory Council on Employee Welfare and Pension Benefit Plans'' (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multi employer plan); three representatives of employers (at least one of whom shall be

representative of employers maintaining or contributing to multi employer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The un-expired term of one member of the Council who has been serving as the investment-counseling representative is now open to nominations as the member has resigned from the Advisory Council. There are two years remaining of the un-expired term. The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse ERISA Advisory Council membership.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent the field specified in the preceding paragraph, may submit recommendations to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N–5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before April 10, 2002. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization.

Signed at Washington, DC this 11th day of March 2002.

Ann L. Combs,

Assistant Secretary of Labor Pension and Welfare Benefits Administration

[FR Doc. 02–6164 Filed 3–13–02; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–037)]

National Environmental Policy Act; NASA Routine Payloads for Expendable Launch Vehicles

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of draft environmental assessment (DEA) for launch of NASA routine spacecraft as payloads on expendable launch vehicles.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA has prepared and issued a DEA for launch of NASA routine spacecraft as payloads on expendable launch vehicles. This DEA addresses the potential environmental impacts associated with preparing and implementing the launch of missions that are designated routine payloads on U.S. expendable launch vehicles from existing U.S. facilities using established procedures. The spacecraft covered by this DEA (referred to as routine payload spacecraft) would meet rigorously defined criteria ensuring that the spacecraft, their operation, and their decommissioning would not present any new or substantial environmental and safety concerns. A Routine Payload Checklist (RPC) is used to exclude missions from consideration as routine payloads if they include any extraterrestrial sample return; would be launched on a vehicle and launch pad combination not covered in this DEA; carry radioactive sources that could not be approved by the NASA Office of Safety and Mission Assurance (OSMA) Nuclear Flight Safety Assurance Manager (NFSAM); cause the manifested launch rate (per year) for a particular launch vehicle to exceed the rate previously approved and permitted at the launch sites; require the construction of any new facilities (or substantial modification of existing facilities); utilize hazardous materials in quantities exceeding the Envelope Payload Characteristics (EPCs); utilize potentially hazardous material whose type or amount would not be covered by new or existing local permits or is not included within the definition of the Envelope Spacecraft (ES); release material other than propulsion system exhaust or inert gases into the atmosphere; suggest the potential for any substantial impact on public health and safety not covered by this DEA; have the potential for substantial effects on the environment outside the United States; utilize an Earth-pointing laser system that does not meet the requirements for safe operations according to American National Standards Institute (ANSI) analysis techniques; carry live or inactive disease-causing biological agents; or have the potential to create substantial public controversy related to environmental issues. The proposed launches would occur from existing launch facilities at Cape Canaveral Air Force Station (CCAFS), Florida, and Vandenberg Air Force Base (VAFB), California, during the period 2002 to 2012. Spacecraft that comply with the RPC would utilize materials, quantities of materials, launch vehicles, and operational characteristics that are consistent with normal and routine spacecraft preparation and flight activities at VAFB, CCAFS, and Kennedy Space Center (KSC), Florida. Therefore, the environmental impacts of launching routine payload spacecraft would fall within the range of routine, ongoing, and previously documented impacts associated with approved programs that have been determined not to be significant. The purpose and need for this proposed action is to fulfill NASA's mission for Earth exploration, space exploration, technology development, and scientific research. The scientific missions associated with NASA routine payload spacecraft could not be accomplished without launching orbital and interplanetary spacecraft.

DATES: Comments must be provided in writing to NASA on or before April 15, 2002.

ADDRESSES: Comments should be addressed to Mark R. Dahl, Program Executive, NASA Headquarters, Code SM, Washington, DC 20546. Hard copy comments are preferred, but comments may be sent by electronic mail to *mdahl@hq.nasa.gov.* The DEA may be reviewed at the locations listed under the supplementary information in this notice.

FOR FURTHER INFORMATION CONTACT: Mark R. Dahl, 202–358–4800; *mdahl@hq.nasa.gov.* The DEA also is available in Acrobat® format at *http://spacescience.nasa.gov/admin/pubs/routine_EA/index.htm.*

SUPPLEMENTARY INFORMATION: U.S. space and Earth exploration is integral to NASA's strategic plan for carrying out its mission. NASA is also committed to the further development of advanced, low-cost technologies for exploring and

utilizing space. To fulfill these objectives, a continuing series of scientific spacecraft would need to be designed, built, and launched into Earth orbit or towards other bodies in the Solar System. These spacecraft would flyby, encounter, orbit about, land on, or impact with these bodies to collect various scientific data that would be transmitted to Earth via radio for analysis. The scientific missions associated with NASA routine payload spacecraft could not be accomplished without launching such scientific spacecraft.

The proposed action is comprised of preparing, launching, and decommissioning missions designated NASA routine payload spacecraft. The design and operational characteristics and, therefore, the environmental impacts of routine payload spacecraft would be rigorously bounded. Routine payload spacecraft would utilize materials, launch vehicles, facilities, and operations that are normally and customarily used at Vandenberg Air Force Base (VAFB), California, and Cape Canaveral Air Force Station (CCAFS) and Kennedy Space Center (KSC), Florida. The routine payload spacecraft would use these materials, launch vehicles, facilities, and operations only within the scope of activities already approved or permitted. The scope of this DEA includes all spacecraft that would meet specific criteria on their construction and launch, would accomplish the requirements of NASA's research objectives, and would not present new or substantial environmental impacts or hazards. These spacecraft would meet the limitations set forth in the Routine Payload Checklist (RPC), which was developed to delimit the characteristics and environmental impacts of this group of spacecraft. Preparation and launch of all spacecraft that are defined as routine payloads would have environmental impacts that fall within the range of routine, ongoing, and previously documented impacts associated with approved missions that have been determined not to be significant. Alternative spacecraft designs that exceed the limitations of the RPC may have new or substantial environmental impacts or hazards and are not covered by this DEA. Foreign launch vehicles would require individual consideration, review, and separate environmental analysis, and were not considered to be reasonable alternatives for the purpose of this routine payload spacecraft DEA. The No-Action Alternative would mean that NASA would not launch scientific spacecraft missions defined as routine payloads using specific criteria and thresholds. NASA would then continue to propose spacecraft missions for individualized review under NEPA. Such duplicate analyses and redundant documentation for spacecraft missions that meet the limitations of the RPC, however, would not present any new information or identify any substantially different environmental impacts.

The expendable launch vehicles (ELVs) proposed for launching the routine payload spacecraft represent domestic (U.S.) ELVs that would be suitable for launching the routine payload spacecraft, would potentially be available during the 2002 to 2012 period, have documented environmental impacts, and would utilize existing launch facilities. The ELVs included in this action are the Atlas series, Delta series, Taurus, Athena series, Pegasus XL, and Titan II. These launch vehicles would accommodate the desired range of payload masses, would provide the needed trajectory capabilities, and would provide highly reliable launch services. Individual ELVs would be carefully matched to the launch requirements of each particular routine payload spacecraft. For the NASA routine spacecraft missions, the potentially affected environment for normal launches includes the areas at and in the vicinity of the two launch sites, CCAFS in Florida, and VAFB in California. For normal launches of routine payloads under the proposed action, the environmental impacts would be associated principally with the exhaust emissions from the launch vehicles. These effects would include short-term impacts on air quality within the exhaust cloud and near the launch pads, and the potential for acidic deposition on the vegetation and surface water bodies at and near each launch complex, particularly if a rain storm occurred. To minimize the potential for disturbance of protected wildlife species, consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act of 1973 (as amended) is required. Routine payload processing and launch activities would not require any additional permits or mitigation measures beyond those already existing, or in coordination, for VAFB or CCAFS launches.

There are no direct or substantial environmental impacts, including cumulative impacts, associated with the proposed action that have not already been covered by NEPA documentation for the existing launch sites, launch vehicles, launch facilities, and payload processing facilities. NASA missions covered by this DEA would be manifested at VAFB or CCAFS and would be within the total number of launch operations previously analyzed in launch vehicle and launch site NEPA documents.

The DEA may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW., Washington, DC 20546 (202–358–0167).

(b) Spaceport U.S.A., Room 2001, John F. Kennedy Space Center, FL 32899. Please call Penny Myers beforehand at 321–867–9280 so that arrangements can be made.

(c) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

The DEA may be examined at the following NASA Centers by contacting the appropriate Freedom of Information Act Office:

(d) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–1181).

(e) NASA, Dryden Flight Research Center, P.O. Box 273, Edwards, CA 93523 (661–258–3689).

(f) NASA, Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2755).

(g) NASA, Goddard Space Flight Center, Greenbelt Road, Greenbelt, MD 20771 (301–286–6255).

(h) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(i) NASA, Langley Research Center, Hampton, VA 23681 (757–864–2497).

(j) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–1837).

(k) NASA, Stennis Space Center, MS 39529 (228–688–2164).

Limited hard copies of the DEA are available, on a first request basis, by contacting Mr. Dahl at the address or telephone number indicated herein.

Jeffrey E. Sutton,

Assistant Administrator for Management Systems.

[FR Doc. 02–6169 Filed 3–13–02; 8:45 am]

BILLING CODE 7510–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27495]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 8, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to

provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 2, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant application(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 2, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc., et al. (70–9897)

Allegheny Energy, Inc. (''Allegheny''), a registered holding company, Allegheny Ventures, Inc. (''Ventures''), a direct wholly owned nonutility subsidiary company of Allegheny, both located at 10435 Downsville Pike, Hagerstown, Maryland 21740; and Allegheny Energy Supply Company, L.L.C. (''AE Supply''), 4350 Northern Pike, Monroeville, Pennsylvania 15146–2841, a direct wholly owned generating subsidiary company except by order under section 3(a)(2) of the Act and direct held by Allegheny; (collectively, ''Applicants'') have filed a post-effective amendment under sections 6(a) and 7, of the Act, and rules 53 and 54 under the Act.

By order dated December 31, 2001 (HCAR No. 27486) (''Order''), the Commission authorized, among other things, through July 31, 2005 (''Authorization Period''): (1) Allegheny to issue up to $1 billion in equity securities [1] and (2) Allegheny and/or AE Supply to issue short-term debt [2] and long-term debt in an aggregate amount up to $4 billion. Applicants now seek to amend the authorization granted in the Order.

Specifically, Applicants now make the following requests:

(1) Allegheny to issue up to an aggregate of $1 billion at any one time outstanding through the Authorization Period to issue and sell, common stock or options, warrants or other stock purchase rights exercisable for common stock or contracts to purchase common stock in public or privately negotiated for cash or as consideration for the acquisition of equity securities or assets of other companies, provided in section 32 and 33 of the Act and under rule 58; and

(2) Allegheny and AE Supply seek to modify the Order to extend the maturity of the Notes from 270 days to 364 days.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–6103 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

[1] Specifically, the Order stated, ''Allegheny may issue common stock or options, warrants or other stock purchase rights exercisable for common stock in public or privately negotiated transactions for cash or as consideration for the equity securities or assets of other companies, provided that the acquisition of securities of the equity securities or assets has been authorized in this proceeding, a separate proceeding, or is exempt by the Act or the rules under the Act.''

[2] The Order generally provided that short-term debt will not have a maturity of less than one day and not more than 364 days. The Order also provided that notes payable to banks would have a maturity of not more than 270 days after the date of issuance or renewal (''Notes'').

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–13841]

Issuer Delisting; Notice of Application for Withdrawal From Listing and Registration on the American Stock Exchange LLC (the Rottlund Company, Inc., Common Stock, Par Value $.10 Per Share)

March 8, 2002.

The Rottlund Company, Inc., a Minnesota corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, par value, $.10 per share (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

On March 5, 2002, the Board of Directors of the Issuer (''Board'') approved a resolution to withdraw the Issuer's Security from the Amex. On January 24, 2002, the Issuer commenced a tender offer to purchase any and all of the outstanding shares of its Security, pursuant to the terms and conditions set forth in the Issuer's Tender Offer Statement filed with the Commission (the ''Offer''). The Offer expired on March 6, 2002 and, as a result, the Issuer no longer meets Amex's required maintenance standards concerning the number of registered shareholders of the Security. In addition, the Issuer also cites the following reasons for withdrawal of its Security from the Amex; (i) the Security has had historically low trading prices and trading volume; (ii) the costs of remaining a publicly-traded company are significant; (iii) the Issuer has not been able to realize the benefits associated with being a publicly-traded company; and (iv) as a result of the merger, the Issuer will no longer have any public shareholders. Consequently, the Issuer has not made alternative arrangements for the trading of the Security following its delisting from the Amex.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Minnesota, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing and registration under Section 12(b) of the Act [3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before March 29, 2002 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–6163 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

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 meeting during the week of March 4, 2002: An additional closed meeting was held on Tuesday, March 5, 2000 at 5:45 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 meeting. 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 meeting.

The subject matter of the closed meeting held on Tuesday, March 5, 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 11, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–6215 Filed 3–11–02; 4:47 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45524; File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03]

Self-Regulatory Organizations; the Depository Trust Company, the Options Clearing Corporation, National Securities Clearing Corporation, Emerging Markets Clearing Corporation, Government Securities Clearing Corporation, and MBS Clearing Corporation; Notice of Filing of Proposed Rule Changes Seeking Authority To Enter Into a Multilateral Cross-Guaranty Agreement

March 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 14, 2000, February 20, 2001, June 26, 2001, June 27, 2001, September 21, 2001, and September 25, 2001, The Depository Trust Company (''DTC''), The Options Clearing Corporation (''OCC''), National Securities Clearing Corporation (''NSCC''), Emerging Markets Clearing Corporation (''EMCC''), Government Securities Clearing Corporation (''GSCC''), and MBS Clearing Corporation (''MBSCC'') (collectively referred to as the ''clearing corporations''), respectively, filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes (File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2000–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03) as described in Items I, II, and III below, which items have been prepared primarily by DTC, OCC, NSCC, EMCC, GSCC, and MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify the clearing corporations' rules to enable them to enter into a multilateral cross-guaranty agreement (''Multilateral Agreement'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In their filings with the Commission the clearing corporations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The clearing corporations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

At the present time, there are limited cross-guaranty agreements (''bilateral agreements'') in effect between:

(1) DTC and NSCC (forming part of the DTC–NSCC Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement that also provides for the netting of settlement payments and the collateralization of transactions processed through the facilities of DTC and NSCC);[3]

(2) MBSCC and Participants Trust Company;[4]

(3) NSCC and each of MBSCC, GSCC and International Securities Clearing Corporation (''ISCC'');[5]

(4) NSCC and OCC;[6] and

(5) EMCC and each of NSCC, GSCC, and ISCC.[7]

In general, each clearing agency that is a party to a bilateral agreement provides the other clearing agency with a limited guaranty of the obligations of any entity that is a member of both clearing agencies. This means that if a common member fails and if one clearing agency winds up its business with the common member with assets of the common member in excess of the common member's liabilities to the clearing agency and the other clearing agency winds up its business with the common member with liabilities of the common member in excess of the

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release Nos. 36867 (February 21, 1996) [File No. SR–DTC–96–06] and 36866 (February 21, 1996) [File No. SR–NSCC–96–03](orders amending rules and cross-guaranty agreement to accommodate same-day funds settlement).

[4] Participants Trust Company has been merged into DTC. Securities Exchange Act Release No. 38604 (May 9, 1997) [File No. SR–PTC–97–01].

[5] ISCC has ceased operations and is no longer a registered clearing agency. Securities Exchange Act Release Nos. 37616 (August 28, 1996) [File Nos. SR–MBSCC–96–02, SR–GSCC–96–03 and SR–ISCC–96–04] and 39020 (September 4, 1997) [File No. SR–NSCC–97–11].

[6] Securities Exchange Act Release No. 39022 (September 4, 1997) [File Nos. SR–OCC–97–17 and SR–NSCC–97–12].

[7] Securities Exchange Act Release No. 42180 (November 29, 1999) [File No. SR–EMCC–99–7] and 37616 (August 28, 1996) [File Nos. SR–NSCC–96–02, SR–GSCC–96–03, and SR–ISCC–96–04].

common member's liabilities, (i) the clearing agency with the excess pays the clearing agency with the deficiency an amount equal to the lesser of the excess or the deficiency, and (ii) the amount paid by the clearing agency with the excess to the clearing agency with the deficiency becomes an obligation of the common member to the clearing agency with the excess which the clearing agency with the excess may satisfy if necessary (thereby reimbursing itself for the amount paid to the clearing agency with the deficiency) from the assets of the common member. In this way, through the mechanism of a limited cross-guaranty and a compensating reimbursement obligation, the assets of a common member at one clearing agency in excess of its liabilities to that clearing agency may be made available to satisfy the liabilities of the common member to another clearing agency where the common member has a deficiency of assets to satisfy its liabilities.

Background

The proposed Multilateral Agreement is similar in purpose to the existing bilateral agreements but differs in form, scope, and operation because (i) all of the parties to the several bilateral agreements will be parties to the Multilateral Agreement, (ii) all of the transactions of common members with any of the clearing corporations will be subject to the limited cross-guaranties of the Multilateral Agreement, (iii) all of the assets of common members with any of the parties to the Multilateral Agreement will be subject to application pursuant to the provisions of the Multilateral Agreement, (iv) all of the parties to the Multilateral Agreement will rank *pari passu* in terms of the payment of their respective guaranty obligations and entitlements, and (v) all such guaranty obligations and entitlements will be (A) calculated by DTC (based on information provided by the clearing agencies) pursuant to a formula set forth in the Multilateral Agreement and (B) settled through the facilities of DTC upon instructions from the clearing agencies required to make guaranty payments.

Set forth below is a description of the material terms and conditions of the Multilateral Agreement:

If a clearing agency that is a party to the Multilateral Agreement ceases to act for or suspends a person (''ceases to act'') and if that person is a member or participant of two or more clearing agencies (''common member''), such clearing agency must give each other clearing agency a notice (''default notice'') that it has ceased to act for such common member (thereafter, ''defaulting member''). Each other clearing agency that also ceases to act for the defaulting member within a period of ten business days after the default notice is given (''participating clearing agency'') will have fifteen business days to deliver to each other participating clearing agency a statement (''information statement'') that sets forth the positive or negative sum derived (after application of any applicable liquidation procedures) from adding the amounts (specified in the Multilateral Agreement) owed by the participating clearing agency to the defaulting member as of the close of business on the day on which such participating clearing agency ceased to act for such defaulting member and subtracting the amounts (specified in the Multilateral Agreement) owed by the defaulting member to the participating clearing agency as of the close of business on such date. The resulting amount is the ''available net resources'' of such participating clearing agency with respect to such defaulting member.

Each participating clearing agency with positive available net resources (''payor clearing agency'') has an obligation to make a payment (''guaranty obligation'') to each participating clearing agency with negative available net resources, and each participating clearing agency with negative available net resources (''payee clearing agency'') will have an entitlement to receive a payment (''guaranty entitlement'') from each participating clearing agency with positive available net resources, in an amount determined by a formula set forth in the Multilateral Agreement which: (i) Limits the aggregate guaranty obligation of any payor clearing agency to the amount of its positive available net resources and prorates the aggregate guaranty obligations of all payor clearing agencies (based on their available net resources) if all positive available net resources of all payor clearing agencies exceeds all negative available net resources of all payee clearing agencies and (ii) limits the aggregate guaranty entitlement of any payee clearing agency to the amount of its negative available net resources and prorates the aggregate guaranty entitlements of all payee clearing agencies (based on their available net resources) if the negative available net resources of all payee clearing agencies exceeds the positive available net resources of all payor clearing agencies.

Within two business days after the end of the period for submitting information statements with the information on the available net resources of the participating clearing agencies, DTC, acting for the participating clearing agencies whether or not DTC is a participating clearing agency with respect to any particular claim under the Multilateral Agreement and using only the information on available net resources contained in the information statements, will calculate the guaranty obligations and the guaranty entitlements of the participating clearing agencies in accordance with the formula set forth in the Multilateral Agreement and will deliver a report thereon to each of the participating clearing agencies. Two business days after that, DTC, acting on appropriate payment instructions from the payor clearing agencies, will debit their settlement accounts at DTC the amounts of their guaranty obligations and will credit the settlement accounts of the payee clearing agencies at DTC the amounts of their guaranty entitlements. Such debits and credits are then netted and settled with all other debits and credits to the settlement accounts of the participating clearing agencies on the day of settlement. All of the clearing agencies are or will be prior to the execution of the Multilateral Agreement participants of DTC.

It is important to note that a clearing agency cannot assert a claim and cannot be obligated to make or be entitled to receive a payment unless it ceases to act for a defaulting member. Each clearing agency will determine on the basis of its own rules whether or not to cease to act for a defaulting member. Generally, a clearing agency may cease to act for a defaulting member to protect the interests of the clearing agency, its other members or participants, and the national system for the clearance and settlement of securities transactions if, among other things, the defaulting member (a) has failed to pay a settlement debit, (b) has failed to pay or perform any other obligation to the clearing agency or (c) has become the subject of an insolvency proceeding or has become a ''failed member'' within the meaning of the Federal Deposit Insurance Corporation Improvement Act of 1991 (*e.g.* it ceases to meet its obligations when due even if it has not become the subject of a formal insolvency proceeding). Ceasing to act for a member or participant is a serious measure which clearing agencies do not take lightly or do for minor defaults. Accordingly, by requiring that a clearing agency cease to act for a defaulting member before the procedures of the Multilateral Agreement can be implemented, the Multilateral

Agreement ensures that the payment obligations of payor clearing agencies and the reimbursement obligations of defaulting participants to payor clearing agencies will not be triggered by minor defaults which do not pose a threat to the interests of the clearing agencies, their members or participants, or to the national system for the clearance and settlement of securities transactions.

As the foregoing description of the process for determining and satisfying a claim under the Multilateral Agreement indicates, no clearing agency would ever be required under the Multilateral Agreement to deliver assets or the proceeds of assets of a defaulting member to another clearing agency except for assets or the proceeds thereof in excess of the obligations and liabilities of the defaulting member to the first clearing agency and then only up to the amount needed to discharge the liabilities and obligations of the defaulting member to the second clearing agency. In substance and effect, the Multilateral Agreement provides a mechanism for using the assets of a member or participant of any clearing agency to secure the obligations and liabilities of such member or participant, first, to such clearing agency and, second, to other clearing agencies to the extent of any excess assets. The Multilateral Agreement, therefore, should reduce risk to the clearing agencies (and to the national system for the clearance and settlement of securities transactions) because a defaulting common member may have positions spread across the clearing agencies in such manner as to cause its available net resources at one or more clearing agencies to be positive even though its available net resources at one or more other clearing agencies are negative.

The Multilateral Agreement also provides for subsequent adjustments in guaranty obligations and guaranty entitlements among participating clearing agencies if information is discovered which, if known at the time of the initial calculation, would have changed the amounts of such guaranty obligations and guaranty entitlements, subject to certain conditions and limitations as described below.

If at any time within four years after any payment is made with respect to a guaranty obligation any participating clearing agency has any information that could result in a change in the calculation of such payment, such participating clearing agency must give each other participating clearing agency a notice thereof (''adjustment notice''). Within a period of ten business days after the adjustment notice is given, each participating clearing agency must deliver to each other participating clearing agency (and to DTC if DTC is not a participating clearing agency with respect to such default) a statement (''supplemental information statement'') which sets forth (i) the amount of the available net resources of such participating clearing agency with respect to the defaulting member as of the close of business on the day on which such participating clearing agency ceased to act for such defaulting member but taking into account the effect, if any, of the information in the adjustment notice and (ii) the amount of its available net resources, if any, as of the close of business on the day it received the adjustment notice.

Within two business days after the end of the period for submitting supplemental information statements with the information on the available net resources of the participating clearing agencies, DTC, acting for the participating clearing agencies (whether or not DTC is a participating clearing agency with respect to such default) and using only the information on available net resources contained in the supplemental information statements, will recalculate the guaranty obligations and guaranty entitlements of the participating clearing agencies in accordance with the same formula originally used to calculate the guaranty obligations and guaranty entitlements of the participating clearing agencies and will deliver a report thereon to the participating clearing agencies. However, no participating clearing agency that is required to make a payment as a result of any recalculation of guaranty obligations and guaranty entitlements with respect to a prior default will be required to make any payment in excess of the positive amount of its available net resources on the date it received the adjustment notice plus any cash payments it previously received or minus any cash payments it previously paid pursuant to the terms of the Multilateral Agreement with respect to the same default. Two business days after that, DTC, acting on appropriate instructions from the participating clearing agencies required to make adjustment payments as a result of the recalculation of guaranty obligations and guaranty entitlements described above will debit their settlement accounts the amounts they are obligated to pay and will credit the settlement accounts of the participating clearing agencies entitled to receive adjustment payments the amounts they are entitled to receive. Such debits and credits will then be netted and settled with all other debits and credits to the settlement accounts of the participating clearing agencies on the day of settlement.

As the foregoing description of the process for adjusting guaranty obligations and guaranty entitlements under the Multilateral Agreement indicates, a clearing agency will never be required to use its own assets to pay the claim of any other clearing agency against a defaulting member. Only the available net assets of the defaulting member will ever be used for this purpose. So, if as a result of a recalculation of guaranty obligations and guaranty entitlements, a participating clearing agency which was a payor clearing agency has an increased payment obligation or a participating clearing agency which was a payee clearing agency is now required to make a payment, the amount of that payment will be limited to the net assets of the defaulting member then in the possession of the participating clearing agency plus the net amount of any payments it previously received from other participating clearing agencies regarding the same claim.

Any clearing agency other than DTC may withdraw from the Multilateral Agreement upon ten days' advance written notice. Any clearing agency which resigns as a participant of DTC will also cease to be a party to the Multilateral Agreement effective upon such resignation. DTC may terminate the Multilateral Agreement entirely on one year's advance written notice. However, any such withdrawal or resignation will not affect the obligations of a withdrawing or resigning clearing agency with respect to a claim for which a default notice was delivered prior to such withdrawal or resignation and any such termination does not affect the obligations of any clearing agency with respect to a claim for which a default notice was delivered prior to such termination.

In conjunction with the Multilateral Agreement, NSCC, EMCC, GSCC, MBSCC, and OCC will be terminating the bilateral agreements so that there will be no issues of conflict or priority with the limited cross-guaranty provisions of the Multilateral Agreement. DTC and NSCC will enter into a Seconded Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement (''New DTC–NSCC Agreement''). The New DTC–NSCC Agreement will modify and supercede the current Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement dated February 21,

1996,[8] between DTC and NSCC (''Old DTC–NSCC Agreement''). The New DTC–NSCC Agreement will delete the limited net resources cross-guaranty provisions of the Old DTC–NSCC Agreement so that the limited net resources cross-guaranty provisions of the Multilateral Agreement will be the only such provisions of this type between DTC and NSCC and among DTC, NSCC, and the other parties to the Multilateral Agreement.

Pursuant to the Multilateral Agreement, a clearing agency party may be entitled to receive a guaranty payment from one or more other parties to the Multilateral Agreement with respect to the obligations of a defaulting member. However, if a clearing agency party receives a guaranty payment pursuant to the Multilateral Agreement, it will have a contingent obligation to refund some or all of such guaranty payment under two circumstances (each colloquially referred to as a ''clawback''):

(i) A repayment as a result of a recalculation of the guaranty obligations and guaranty entitlements of participating clearing agencies, which, as stated above, could take place at any time up to four years after the guaranty payment is received; or

(ii) A payment or repayment as a result of a judicial determination that the defaulting member did not owe a participating clearing agency some or all of the amount of the charge covered by the guaranty payment, which, as explained below, could take place at any time up to six years after such charge.

The Multilateral Agreement provides that if a court of competent jurisdiction determines that an amount paid by a payor clearing agency to a payee clearing agency was not paid on account of an amount owed by the defaulting member to the payee clearing agency, (i) the payee clearing agency will repay such amount (which may be some or all of the guaranty payment it received from the payor clearing agency) to the payor clearing agency or (ii) if so ordered by a court, the payee clearing agency shall pay such amount to the defaulting member or its legal representative (*e.g.,* a trustee or receiver).

There is no time limit expressed in the Multilateral Agreement within which a payee clearing agency can be required to make such court-ordered repayment to the payor clearing agency or payment to the defaulting member or its legal representative because the parties to the Multilateral Agreement cannot by contract among themselves bind any court or any third party seeking relief in any court to any such time limit. Accordingly, the time within which a payee clearing agency could be required to make such payment or repayment would be the time within which a third party may bring a claim for such relief (*i.e.,* the statutory limitations period applicable to such claim). Although it is difficult to predict how a claim that the payee clearing agency improperly charged the defaulting member and thereby received a guaranty payment from a payor clearing agency for an amount that the defaulting member did not in fact owe to the payor clearing agency would be framed, it is probable that it would be framed as a claim in contract (*i.e.,* that the charge was not a proper charge under the rules of the payee clearing agency). Under the rules of each clearing agency, such rules constitute a contract between such clearing agency and its members or participants and are binding on all parties. In New York, which is the most likely venue of any proceeding and the law that would most likely govern any claim, the statutory limitations period applicable to a claim on contract is generally six years from the time of the breach.

Although, as just discussed, a clawback could occur up to four to six years after a payee clearing agency receives a payment, as a practical matter, it is extremely unlikely that it would take (i) four years for participating clearing agencies to make all necessary adjustments in the calculation of guaranty obligations and guaranty entitlements under the Multilateral Agreement or (ii) six years for a defaulting member or its legal representative to assert a claim against a payee clearing agency that an amount was improperly charged against such defaulting member. Nevertheless, because MBSCC does not currently mutualize risk among its participants and a payment of such amount from its own resources would have the economic effect of charging all participants for such costs, MBSCC must make appropriate arrangements to deal with a clawback if it ever occurs.

GSCC and MBSCC are proposing to amend their rules regarding clawbacks. The following is a summary of the amendments proposed by GSCC and the amendments proposed by MBSCC.

GSCC

GSCC is proposing to amend its rules to provide it with two options in dealing with a clawback:

Option 1

The proposed rule change would give GSCC the option to apply any guaranty payment that it receives pursuant to the Multilateral Agreement upon receipt. If GSCC chooses this option:

a. the members that would have been assessed in the absence of the guaranty payment will be required to reimburse GSCC for any amount subject to a clawback pro rata based on the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from such guaranty payment;

b. the obligations of the members referred to in (a) above will be secured by requiring that such members must make and maintain additional deposits to the clearing fund in amounts equal to the benefits they received (in terms of the reduction or elimination of assessments made or that would have been made against them) from the guaranty payment;

c. to deal with the possibility that a shortfall may occur in the situation where the additional clearing fund deposit of a particular member referred to in (a) above is no longer available at the time a clawback occurs (because, for example, that member became insolvent, and its entire clearing fund deposit was used to cover losses incurred by GSCC), GSCC may treat such shortfall as an ''other loss'' pursuant to GSCC Rule 4, Section 8(g); and

d. to deal with the fact that, at least theoretically, a clawback may not occur until four years (in the case of a recalculation of guaranty obligations and guaranty entitlements) to six years (in the case of a court determination of an improper charge) after receipt of a guaranty payment, the additional deposits made, pursuant to (b) or (c) above, by the members that would have been assessed must be retained by GSCC until GSCC is satisfied that (i) GSCC is no longer subject to a clawback under the Multilateral Agreement and (ii) the members are therefore no longer subject to a corresponding obligation to reimburse GSCC for the amount of any such clawback; and

e. GSCC has the right (i) to waive the obligation of the members to make and maintain additional deposits to the clearing fund to secure an obligation on their part to reimburse GSCC for the amount of any clawback and/or (ii) to pay the clawback from the resources of

[8] Securities Act Release Nos. 36867 (February 21, 1996), 61 FR 7288 [File No. SR–DTC–96–06] and 36866 (February 21, 1996), 61 FR 7288 [File SR–NSCC–96–03] (orders amending rules and cross-guaranty agreement to accommodate same-day funds settlement).

GSCC without recourse to any member or their deposits to the clearing fund.

Option 2

The proposed rule change will give GSCC the option to retain the guaranty payment and not apply it to its losses and/or liabilities arising from the default of the member until after the end of the clawback period. If GSCC chooses this option:

a. the members would be assessed pursuant to GSCC's loss sharing rule and

b. at the end of the clawback period, GSCC would distribute the guaranty payment to the members who were assessed (whether or not they are still members at the time of such distribution) pro rata the amounts of such assessments.

Given that similar repayment issues are presented by GSCC's cross-margining arrangements, GSCC is proposing to make comparable changes in the rules with respect to the repayment of cross-margining payments.

MBSCC

To deal with clawbacks, MBSCC is proposing to amend its rules as follows:

a. upon receipt of a guaranty payment, MBSCC will reduce or eliminate by an equivalent amount the assessments made or that otherwise would be made against the original contra-side participants pro rata as now provided in Rule 4 of Article III of its rules;

b. the original contra-side participants will be required to reimburse MBSCC for any amount subject to a clawback pro rata the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from the guaranty payment;

c. MBSCC will secure the obligations of the original contra-side participants referred to above by requiring that such original contra-side participants must make and maintain additional deposits to the participants fund in amounts equal to the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from the guaranty payment;

d. to deal with the possibility that the participants fund deposit of a particular original contra-side participant referred to in (3) above may no longer be available at the time the clawback occurs (because, for example, that participant became insolvent and its entire participant fund deposit was used to cover losses incurred by MBSCC), the remaining original contra-side participants referred to in (3) above would be required to replenish the deficiency by making additional deposits to the participants fund pro rata their additional deposits to the participants fund pursuant to (3) above;

e. to deal with the fact that, at least theoretically, a clawback may not occur until four years (in the case of a recalculation of guaranty obligations and guaranty entitlements) to six years (in the case of a court determination of an improper charge) after receipt of a guaranty payment, the additional deposits made, pursuant to (3) or (4) above, by original contra-side participants must be retained by MBSCC until MBSCC is satisfied that (i) MBSCC is no longer subject to a clawback under the Multilateral Agreement and (ii) the original contra-side participants are therefore no longer subject to a corresponding obligation to reimburse MBSCC the amount of any such clawback; and

f. MBSCC has the right to (i) waive the obligation of the original contra-side participants to make and maintain additional deposits to the participants fund to secure an obligation on their part to reimburse MBSCC for the amount of any clawback and/or (ii) to pay any clawback from the resources of MBSCC without recourse to any original contra-side participants or their deposits to the participants fund.

Section 17A(a)(2)(A) of the Act directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions and to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of transactions.[9] Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[10]

The clearing agencies believe that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations promulgated thereunder because they will: (i) Reduce the risk of loss to clearing agencies resulting from the failure or default of a common member, (ii) mitigate the risk to the national clearance and settlement system resulting from such failure or default and the impact of such failure or default on clearing agencies and their other members or participants, (iii) foster cooperation and coordination among clearing agencies and other persons involved in the clearance and settlement of securities transactions, and (iv) assist clearing agencies in safeguarding the securities and funds in their custody or control or for which they are responsible.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

The clearing agencies do not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule changes, and none have been received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of DTC, OCC, NSCC, EMCC, GSCC, and MBSCC. All submissions should refer to the File Nos. SR–DTC–

[9] 15 U.S.C. 78q–1(a)(2)(A).

[10] 15 U.S.C. 78q–1(b)(3)(A).

2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03 and should be submitted by April 4, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6162 Filed 3–13–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45519; File No. SR–NASD–2001–48]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. To Clarify That the Nasdaq Limited Partnership Qualitative Listing Requirements Are Applicable to Limited Partnerships Listed on Both the National Market and the SmallCap Market

March 7, 2002.

On August 7, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to clarify that Nasdaq's limited partnership qualitative listing requirements are applicable to limited partnerships listed on both the National Market and the SmallCap Market.

The proposed rule change was published for comment in the **Federal Register** on December 13, 2001.[3] No comments were received on the proposal. In this order, the Commission is approving the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[4] and, in particular, with the requirements of Section 15A(b)(6).[5]

In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act[6] in that the proposal is designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. The Commission believes that the adoption of uniform listing requirements for limited partnerships will assist Nasdaq in maintaining an efficient and open market.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASD–2001–48), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6160 Filed 3–13–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45526; File Nos. SR–NASD–2002–21; SR–NYSE–2002–09]

Self-Regulatory Organizations: Notice of Filing of Proposed Rule Changes by the National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc. Relating to Research Analyst Conflicts of Interest

March 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 13, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASDR''), and on February 27, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations (''SROs''). On March 7, 2002, NASDR submitted Amendment No. 1 to its proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The SROs propose to amend their rules to address research analyst conflicts of interest. NASDR is proposing to amend the rules of the NASD to establish new NASD Rule 2711 (''Research Analysts and Research Reports'') to address research analyst conflicts of interest. The NYSE is proposing amendments to NYSE Rule 472 (''Communications with the Public''), which will place prohibitions and/or restrictions on the Investment Banking Department, Research Department, and Subject Company Relationships and Communications, and will impose additional disclosure requirements on members, member organizations, and associated persons preparing research reports and making public appearances.

The NYSE is also proposing amendments to NYSE Rule 351 (''Reporting Requirements''), which will require members and member organizations to submit to the Exchange, annually, a written attestation, that the member or member organization has established and implemented written procedures reasonably designed to comply with the provisions of NYSE Rule 472.

Below is the text of the proposed rule changes. Proposed new language is in italic; proposed deletions are in [brackets].

A. NASD Proposed Rule Text

Rule 2711. Research Analysts and Research Reports

(a) Definitions

For purposes of this rule, the following terms shall be defined as provided.

(1) ''Investment banking department'' means any department or division, whether or not identified as such, that performs any investment banking service on behalf of a member.

(2) ''Investment banking services'' include, without limitation, acting as an

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45137 (December 6, 2001), 66 FR 64490.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Thomas M. Selman, Senior Vice President, Investment Companies, Corporate Financing, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission (March 7, 2002) (''Amendment No. 1''). In Amendment No. 1, NASDR revised its response to Items 1(b) and 1(c) of the Form 19b–4 to indicate the impact that proposed NASD Rule 2711 would have on NASD Rule 2210. Additionally, NASDR is inserting language in its Purpose section to clarify how the current disclosure requirements regarding securities recommendations in NASD Rule 2210 would apply if proposed NASD Rule 2711 is approved by the SEC. Finally, NASDR is revising the provisions requiring disclosure of actual material conflicts of interest to conform its provisions to those of the NYSE.

underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs or similar investments; or serving as placement agent for the issuer.

(3) ''Member of a research analyst's household'' means any individual whose principal residence is the same as the research analyst's principal residence.

(4) ''Public appearance'' means any participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public speaking activity in which a research analyst makes a recommendation or offers an opinion concerning an equity security.

(5) ''Research analyst'' means the associated person who is principally responsible for, and any associated person who reports directly or indirectly to such a research analyst in connection with, preparation of the substance of a research report, whether or not any such person has the job title of ''research analyst.''

(6) ''Research analyst account'' means any account in which a research analyst or member of the research analyst's household has a beneficial interest, or over which such analyst or household member has discretion or control, other than an investment company registered under the Investment Company Act of 1940.

(7) ''Research department'' means any department or division, whether or not identified as such, that is principally responsible for preparing the substance of a research report on behalf of a member.

(8) ''Research report'' means a written or electronic communication that the member has distributed or will distribute with reasonable regularity to its customers or the general public, which presents an opinion or recommendation concerning an equity security.

(9) ''Subject company'' means the company whose equity securities are the subject of a research report or recommendation in a public appearance.

(b) Restrictions on Investment Banking Department Relationship with Research Department

(1) No research analyst may be subject to the supervision or control of any employee of the member's investment banking department.

(2) Except as provided in paragraph (b)(3), no employee of the investment banking department may review or approve a research report of the member before its publication.

(3) Investment banking personnel may review a research report before its publication as necessary only to verify the factual accuracy of information in the research report or to review the research report for any potential conflict of interest, provided that:

(A) Any written communication between investment banking and research department personnel concerning such a research report must be made either through an authorized legal or compliance official of the member or in a transmission copied to such an official; and

(B) any oral communication between investment banking and research department personnel concerning such a research report must be documented and made either through an authorized legal or compliance official acting as intermediary or in a conversation conducted in the presence of such an official.

(c) Restrictions on Review of a Research Report by the Subject Company

(1) Except as provided in paragraphs (c)(2) and (c)(3), a member may not submit a research report to the subject company before its publication.

(2) A member may submit sections of such a research report to the subject company before its publication for review as necessary only to verify the factual accuracy of information in those sections, provided that:

(A) The sections of the research report submitted to the subject company do not contain the research summary, the research rating or the price target;

(B) a complete draft of the research report is provided to the legal or compliance department before sections of the report are submitted to the subject company; and

(C) if after submitting the sections of the research report to the subject company the research department intends to change the proposed rating or price target, it must first provide written justification to, and receive written authorization from, the legal or compliance department for the change. The member must retain copies of any draft and the final version of such a research report for three years following its publication.

(3) The member may notify a subject company that the member intends to change its rating of the subject company's securities, provided that the notification occurs on the business day before the member announces the rating change, after the close of trading in the principal market of the subject company's securities.

(d) Prohibition of Certain Forms of Research Analyst Compensation

No member may pay any bonus, salary or other form of compensation to a research analyst that is based upon a specific investment banking services transaction.

(e) Prohibition of Promise of Favorable Research

No member may directly or indirectly offer favorable research, a specific rating or a specific price target, or threaten to change research, a rating or a price target, to a company as consideration or inducement for the receipt of business or compensation.

(f) Imposition of Quiet Periods

No member may publish a research report regarding a subject company for which the member acted as manager or co-manager of:

(1) An initial public offering, for 40 calendar days following the date of the offering; or

(2) a secondary offering, for 10 calendar days following the date of the offering; provided that this provision will not prevent a member from publishing a research report concerning the effects of significant news or a significant event on the subject company within such 40- and 10-day periods, and provided further that the legal and compliance department authorizes publication of that research report before it is issued.

(g) Restrictions on Personal Trading by Research Analysts

(1) No research analyst account may purchase or receive any securities before the issuer's initial public offering if the issuer is principally engaged in the same types of business as companies that the research analyst follows.

(2) No research analyst account may purchase or sell any security issued by a company that the research analyst follows, or any option on or derivative of such security, for a period beginning 30 calendar days before and ending five calendar days after the publication of a research report concerning the company or a change in a rating or price target of the company's securities; provided that:

(A) A member may permit a research analyst account to sell all of the securities held by them that are issued by a company that the research analyst follows, within 30 calendar days after the research analyst began following the company for the member;

(B) a member may permit a research analyst account to purchase or sell any security issued by a subject company within 30 calendar days before the

publication of a research report or change in the rating or price target of the subject company's securities due to significant news or a significant event concerning the subject company, provided that the member's legal or compliance department pre-approves the research report and any change in the rating or price target.

(3) No research analyst account may purchase or sell any security or any option on or derivative of such security in a manner inconsistent with the research analyst's recommendation as reflected in the most recent research report published by the member.

(4) A member's legal or compliance department may authorize a transaction otherwise prohibited by paragraphs (g)(2) and (g)(3) based upon significant personal financial circumstances of the beneficial owner of the research analyst account, provided that:

(A) The legal or compliance department authorizes the transaction before it is entered;

(B) each exception is granted in compliance with policies and procedures adopted by the member that are reasonably designed to ensure that these transactions do not create a conflict of interest between the professional responsibilities and the personal trading activities of a research analyst; and

(C) the member maintains written records concerning each transaction and the justification for permitting the transaction for three years following the date on which the transaction is approved.

(5) The prohibitions in paragraphs (g)(1) through (g)(3) do not apply to a purchase or sale of the securities of:

(A) any registered diversified investment company as defined under Section (5)(b)(1) of the Investment Company Act of 1940; or

(B) any other investment fund over which neither the research analyst nor a member of the research analyst's household has any investment discretion or control, provided that:

(i) The research analyst accounts collectively own interests representing no more than 1% of the assets of the fund;

(ii) the fund invests no more than 20% of its assets in securities of issuers principally engaged in the same types of business as companies that the research analyst follows; and

(iii) the investment fund does not distribute securities in kind to the research analyst or household member before the issuer's initial public offering.

(h) Disclosure Requirements

(1) Ownership and Material Conflicts of Interest

A member must disclose in research reports and a research analyst must disclose in public appearances:

(A) If the research analyst or a member of the research analyst's household has a financial interest in the securities of the subject company, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position);

(B) if, as of five business days before the publication of the research report or the public appearance, the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company; and

(C) any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time of publication of the research report or at the time of the public appearance.

(2) Receipt of Compensation

(A) A member must disclose in research reports if:

(i) The research analyst principally responsible for preparation of the report received compensation that is based upon (among other factors) the member's investment banking revenues; and

(ii) the member or its affiliates received compensation from the subject company within twelve months before, or reasonably expects to receive compensation from the subject company within three months following, publication of the research report.

(B) A research analyst must disclose in public appearances if the analyst knows or has reason to know that the subject company is a client of the member or its affiliates.

(3) Position as Officer or Director

A member must disclose in research reports and a research analyst must disclose in public appearances if the research analyst or a member of the research analyst's household serves as an officer, director or advisory board member of the subject company.

(4) Meaning of Ratings

A member must define in its research reports the meaning of each rating used by the member in its rating system. The definition of each rating must be consistent with its plain meaning.

(5) Distribution of Ratings

(A) Regardless of the rating system that a member employs, a member must disclose in each research report the percentage of all securities rated by the member to which the member would assign a ''buy,'' ''hold/neutral,'' or ''sell'' rating.

(B) In each research report, the member must disclose the percentage of subject companies within each of these three categories for whom the member has provided investment banking services within the previous twelve months.

(C) The information that is disclosed under paragraphs (h)(5)(A) and (h)(5)(B) must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than 15 calendar days after the most recent calendar quarter).

(6) Price Chart

A member must present in any research report concerning an equity security on which the member has assigned any rating for at least one year, a line graph of the security's daily closing prices for the period that the member has assigned any rating or for a three-year period, whichever is shorter. The line graph must:

(A) Indicate the dates on which the member assigned or changed each rating or price target;

(B) Depict each rating and price target assigned or changed on those dates; and

(C) Be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than 15 calendar days after the most recent calendar quarter).

(7) Price Targets

A member must disclose in research reports the valuation methods used to determine a price target. Price targets must have a reasonable basis and must be accompanied by a disclosure concerning the risks that may impede achievement of the price target.

(8) Market Making

A member must disclose in research reports if it was making a market in the subject company's securities at the time that the research report was published.

(9) Disclosure Required by Other Provisions

In addition to the disclosure required by this rule, members and research analysts must provide disclosure in research reports and public appearances that is required by applicable law or regulation, including NASD Rule 2210 and the antifraud provisions of the federal securities laws.

(10) Prominence of Disclosure

The disclosures required by paragraph (h) must be presented on the front page of research reports or the front page must refer to the page on which disclosures are found. Disclosures and references to disclosures must be clear, comprehensive and prominent.

(i) Supervisory Procedures

Each member subject to this rule must adopt and implement written supervisory procedures reasonably designed to ensure that the member and its employees comply with the provisions of this rule, and a senior officer of such a member must attest annually to the Association that it has adopted and implemented those procedures.

B. NYSE Proposed Rule Text

Rule 472 Communications with the Public

Approval of Communications and Research Reports

(a)(1) Each advertisement, market letter, sales literature or other similar type of communication which is generally distributed or made available by a member or member organization to customers or the public [shall] *must* be approved in advance by a member, allied member, supervisory analyst, or *qualified* person designated under the provisions of Rule 342(b)(1).

(2) Research reports [shall] *must* be prepared or approved, in advance, by a supervisory analyst acceptable to the Exchange under the provisions of Rule 344. Where a supervisory analyst does not have technical expertise in a particular product area, the basic analysis contained in such report may be co-approved by a product specialist designated by the organization. In the event that the member organization has no principal or employee qualified with the Exchange to approve such material, it [shall] *must* be approved by a qualified supervisory analyst in another member organization by arrangement between the two member organizations.

Investment Banking, Research Department and Subject Company Relationships and Communications

(b)(1) Research Department personnel or any associated person(s) engaged in the preparation of research reports may not be subject to the supervision or control of the Investment Banking Department of the member or member organization. Research reports may not be subject to review or approval prior to distribution by the Investment Banking Department.

(2) Investment Banking personnel may check research reports prior to distribution only to verify the accuracy of information and to identify or to review for any potential conflicts of interest that may exist, provided that:

(i) *Any such written communication concerning the accuracy of research reports between the Investment Banking and Research Departments must be made either through the Legal or Compliance Department or in a transmission copied to Legal or Compliance; and*

(ii) *any such oral communication concerning the accuracy of research reports between the Investment Banking and Research Departments must be documented and made either with Legal or Compliance personnel acting as intermediary or in a conversation conducted in the presence of Legal or Compliance personnel.*

(3) The subject company may not review or approve research reports prior to distribution, except for the review of sections of a draft of the research report solely to verify facts. Members and member organizations may not, under any circumstances, provide the subject company sections of research reports that include the research summary, the research rating or the price target.

(i) Prior to submitting any sections of the research report to the subject company, the Research Department must provide a complete draft of the research report to the Legal or Compliance Department.

(ii) If after submission to the subject company, the Research Department intends to change the proposed rating or price target, the Research Department must provide written justification to, and receive prior written authorization from, the Legal or Compliance Department for any change. The Legal or Compliance Department must retain copies of any drafts and changes thereto of the research reports provided to the subject company.

(iii) The member or member organization may not notify a subject company that a rating will be changed until after the close of trading in the principal market of the subject company one business day prior to the announcement of the change.

Written Procedures

(c) Each member and member organization must establish written procedures reasonably designed to ensure that members, member organizations and their associated persons are in compliance with this Rule (see Rule 351(f) for attestations to the Exchange regarding compliance).

Retention of Communications

[(c)] (*d*) Communications with the public prepared or issued by a member or member organization [shall] *must* be retained in accordance with Rule 440 (''Books and Records''). The names of the persons who prepared and who reviewed and approved the material [shall] *must* be ascertainable from the retained records and the records retained [shall] *must* be readily available to the Exchange, upon request.

Restrictions on Trading Securities by Associated Persons

(e)(1) No associated person or member of the associated person's household may purchase or receive an issuer's securities prior to its initial public offering (e.g., so-called pre-IPO shares), if the issuer is principally engaged in the same types of business as companies (or in the same industry classification) which the associated person usually covers in research reports.

(2) No associated person or member of the associated person's household may trade in any recommended subject company's securities or derivatives of such securities for a period of thirty (30) calendar days prior to and five (5) calendar days after the member's or member organization's issuance of research reports concerning such security or a change in rating or price target of a subject company's securities.

(3) No associated person or member of the associated person's household may effect trades contrary to the member's or member organization's most current recommendations (i.e., sell securities while maintaining a ''buy'' or ''hold'' recommendation, buy securities while maintaining a ''sell'' recommendation, or effecting a ''short sale'' in a security while maintaining a ''buy'' or ''hold'' recommendation on such security).

(4) The following are exceptions to the prohibitions contained in paragraphs (1), (2), and (3):

(i) Transactions by associated persons and household members that have been pre-approved in writing by the Legal or Compliance Department that are made due to an unanticipated significant change in their personal financial circumstances;

(ii) a member or member organization may permit the issuance of research reports or permit a change to the rating or price target on a subject company, regardless of whether an associated person and/or household members traded the subject company's securities or derivatives of such securities, within the thirty (30) calendar day period

described in paragraph (e)(2), when the issuance of such research reports, or change in such rating or price target is attributable to some significant news or events regarding the subject company, provided that the issuance of such research reports, or change in rating or price target on such subject company has been pre-approved in writing by the Legal or Compliance Department;

(iii) sale transactions by an associated person and/or household member who is new to the member or member organization within thirty (30) calendar days of such associated person's employment with the member or member organization when such associated person and/or household member had previously purchased such security or derivatives of such security prior to the associated person's employment with the member or member organization;

(iv) sale transactions by an associated person and/or household member within thirty (30) calendar days from the date of the member's or member organization's issuance of research reports or changes to the rating or price target on a subject company when such associated person and/or household member had previously purchased the subject company's securities or derivatives of such securities prior to initiation of coverage of the subject company by the associated person;

(v) transactions in accounts not controlled by the associated person and for investment funds in which an associated person or household member participates as a passive investor, provided the interest of the associated person or household member in the assets of the fund does not exceed 1% of the fund's assets, and the fund does not invest more than 20% of its assets in securities of issuers principally engaged in the same types of business as companies (or in the same industry classification) which the associated person usually covers in research reports. If an investment fund distributes securities in kind to an associated person before the issuer's initial public offering, the associated person must either divest those securities immediately or refrain from participating in the preparation of research reports concerning that issuer.

(vi) transactions in a registered diversified investment company as defined under Section 5(b)(1) of the Investment Company Act of 1940.

Restrictions on Member's or Member Organization's Issuance of Research Reports

(f)(1) A member or member organization may not issue research reports regarding an issuer for which the member or member organization acted as manager or co-manager of an initial public offering within forty (40) calendar days following the effective date of the offering.

(2) A member or member organization may not issue research reports regarding an issuer for which the member or member organization acted as manager or co-manager of a secondary offering within ten (10) calendar days following the effective date of the offering.

(3) A member or member organization may permit exceptions to the prohibitions in paragraphs (f)(1) and (2) (consistent with other securities laws and rules) for research reports that are issued due to significant news or events, provided that such research reports are pre-approved in writing by the Legal or Compliance Department.

Prohibition of Offering Favorable Research for Business

(g) No member or member organization may directly or indirectly offer a favorable research rating or specific price target, or offer to change a rating or price target, to a subject company as consideration or inducement for the receipt of business or for compensation.

Restrictions on Compensation to Associated Persons

(h) No member or member organization may compensate an associated person(s) for specific investment banking services transactions. An associated person may not receive an incentive or bonus that is based on a specific investment banking services transaction. However, a member or member organization is not prohibited from compensating an associated person based upon such person's overall performance, including services provided to the Investment Banking Department (see Rule 472(k)(2) for disclosure of such compensation).

(i) [.30] General Standards for All Communications

No change

(j) [.40] Specific Standards for Communications

(1) Recommendations

A recommendation (even though not labeled as a recommendation) must have a basis which can be substantiated as reasonable.

When recommending the purchase, sale or switch of specific securities, supporting information must be provided or offered.

The market price at the time the recommendation is made must be indicated.

(2) [(3)] Records of Past Performance

No change

(3) [(4)] Projections and Predictions

No change

(4) [(5)] Comparisons

No change

(5) [(6)] Dating Reports

No change

(6) [(7)] Identification of Sources

No change

(7) [(8)] Testimonials

No change

(k) [(2)] Disclosure

[When a communication (excluding extemporaneous interviews in and with the media) recommends the purchase or sale of a specific security, member organizations must disclose the following information:

(i) if the organization usually makes a market in the security being recommended or if some or all of the recommended securities are to be sold to or bought from customers on a principal basis.

(ii) if the member organization was manager or co-manager of the most recent public offering (within 3 years) of any securities of the recommended issuer.

(iii) if the member organization or its employees involved in the preparation or the issuance of the communication may have positions in any securities or options of the recommended issuer.

(iv) if a member, allied member or employee is a director of a corporation whose security is being recommended.]

(k)(1) Disclosures Required in Research Reports and Scheduled Public Appearances Disclosure of Member's, Member Organization's and Associated Person's Ownership of Securities

(i) *A member or member organization must disclose in research reports and an associated person must disclose in public appearances:*

a. *if, as of five (5) business days before the publication or appearance, the member or member organization or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934,*

b. *if the associated person or a household member has a financial interest in the securities of the subject company, or*

c. *any other actual, material conflict of interest of the member or member organization, which the associated person knows, or has reason to know, at the time the research report is issued or at the time the public appearance is made.*

Member Organization Compensation

(ii) *A member or member organization must disclose in research reports if the member or member organization or its affiliates received compensation from the subject company within the twelve (12) months prior to the date of the research report. A member or member organization must also disclose if the member or member organization or its affiliates reasonably expects to receive compensation from the subject company within the three months following the date of issuance of the research report. When an associated person recommends securities in a public appearance, the associated person must disclose if the subject company is an investment banking services client of the member, member organization, or one of its affiliates, when the associated person knows or has reason to know of this relationship.*

Disclosure of Associated Person's Affiliations With Subject Company

(iii) *A member or member organization must disclose in research reports whether the associated person or member of the associated person's household is an officer, director or advisory board member of the recommended issuer.*

(k)(2) Disclosures Specific to Research Reports

The front page of a research report either must include the disclosures required under this Rule or must refer the reader to the page(s) on which each such disclosure is found. Disclosures, and references to disclosures, must be clear, comprehensive and prominent. A member or member organization must disclose in research reports if the associated person preparing such reports received compensation that is based upon (among other factors) the member's or member organization's overall investment banking revenues. A member or member organization must disclose in research reports that recommend securities:

(i) If it is making a market in the subject company's securities at the time the research report is issued.

(ii) the valuation methods used, and any price objectives must have a reasonable basis and include a discussion of risks.

(iii) the meanings of all ratings used by the member or member organization in its ratings system. (For example, a member or member organization might disclose that a ''strong buy'' rating means that the rated security's price is expected to appreciate at least 10% faster than other securities in its sector over the next 12-month period). Definitions of ratings terms also must be consistent with their plain meaning. Therefore, for example, a ''hold'' rating should not mean or imply that an investor should sell a security.

(iv) the percentage of all securities that the member or member organization recommends an investor ''buy,'' ''hold,'' or ''sell''. Within each of the three categories, a member or member organization must also disclose the percentage of subject companies that are investment banking services clients of the member or member organization within the previous twelve (12) months. (See Rule 472.70 for further information.)

(v) a chart that depicts the price of the subject company's stock over time and indicates points at which a member or member organization assigned or changed a rating or price target. This provision would apply only to securities that have been assigned a rating for at least one year, and need not extend more than three years prior to the date of the research report. The information in the price chart must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter).

[Supplementary Material * * *]

.10 Definitions

(1) Communication—The term ''Communication'' is deemed to include, but is not limited to, advertisements, market letters, research reports, sales literature, electronic communications, communications in and with the press and wires and memoranda to branch offices or correspondent firms which are shown or distributed to customers or the public.

(2) Research Report—''Research reports''are generally defined as*, but are not limited to*, an analysis of *equity securities of* individual companies[,] or industries, [market conditions, securities or other investment vehicles] which provide information reasonably sufficient upon which to base an investment decision *and include a recommendation. For purposes of Rule 472(a)(2), research reports include, but are not limited to, reports which recommend equity securities, derivatives of such securities, including options, debt and other types of fixed income securities, single stock futures products, and other investment vehicles subject to market risk.*

(3) *Advertisement—''Advertisement'' is defined to include, but is not limited to, any sales communications that is published, or designed for use in any print, electronic or other public media such as newspapers, periodicals, magazines, radio, television, telephone recording, web sites, motion pictures, audio or video device, telecommunications device, billboards or signs.*

(4) *Market letters—''Market letters'' are defined as, but are not limited to, any written comments on market conditions, individual securities, or other investment vehicles. They also include ''follow-ups'' to research reports and articles prepared by members or member organizations which appear in newspapers and periodicals*

(5) *Sales literature—''Sales literature'' is defined as, but is not limited to, written or electronic communications including, but not limited to, telemarketing scripts, performance reports or summaries, form letters, seminar texts, and press releases discussing or promoting the products, services and facilities offered by a member or member organization, the role of investment in an individual's overall financial plan, or other material calling attention to any other communication.*

[.20 Other Communications Activities

Other communications activities are deemed to include, but not be limited to, conducting interviews with the media, writing books, conducting seminars or lecture courses, writing newspaper or magazine articles and making radio/TV appearances.

Member organizations must establish specific written supervisory procedures applicable to members, allied members and employees who engage in these types of communications activities. These procedures must include provisions which require prior approval of such activity by a person designated under the provisions of Rule 342(b)(1). These types of activities are subject to the general standards set forth in .30. In addition, any activity which includes discussion of specific securities is subject to the specific standards in .40.]

.20 For purposes of this Rule, ''investment banking services'' includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transaction), or similar investments; or serving as placement agent for the issuer.

.30 For purposes of this Rule, the term ''Investment Banking Department'' means any department or division of the member or member organization, whether or not identified as such, that

performs any investment banking services on behalf of the member or member organization.

.40 For purposes of this Rule, the term ''associated person'' includes a member, allied member, or employee of a member or member organization responsible for, and any person who reports directly or indirectly to such associated person in connection with the making of the recommendation to purchase, sell or hold an equity security in research reports, or public appearances or establish a rating or price target of a subject company's equity securities. For purposes of this Rule, the term ''household member'' means any individual whose principal residence is the same as the associated person's principal residence. Paragraphs (e)(1), (2), (3); (4)(i), (ii), (iii), (iv) and (v); (k)(1)(i)(B), (k)(1)(iii) apply to any account in which an associated person has a financial interest, or over which the associated person exercises discretion or control.

.50 For purposes of this Rule, the term ''public appearance'' includes, without limitation, participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or public speaking activity.

.60 For purposes of this Rule, ''subject company'' is the company whose equity securities are the subject of research reports.

.70 For purposes of Rule 472(k)(2)(iv), a member or member organization must determine, based on its own ratings system, into which of the three categories each of their securities ratings utilized falls. This information must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter). For example, a research report might disclose that the member or member organization has assigned a ''buy'' rating to 58% of the securities that it follows , a ''hold'' rating to 15%, and a ''sell'' rating to 27%.

Rule 472(k)(2)(iv) requires members or member organizations to disclose the percentage of companies that are investment banking services clients for each of the three ratings categories within the previous twelve (12) months. For example, if 20 of the 25 companies to which a member or member organization has assigned a ''buy'' rating are investment banking clients of the member or member organization, the member or member organization would have to disclose that 80% of the companies that received a ''buy'' rating are its investment banking clients. Such disclosure must be made for the ''buy'', ''hold'' and ''sell'' ratings categories as appropriate.

.80 For purposes of this Rule, the term ''Legal or Compliance Department'' also includes, but is not limited to, any department of the member or member organization which performs a similar function.

.90 For purposes of Rule 472(a), a qualified person is one who has passed an examination acceptable to the Exchange.

.100 For purposes of this Rule, the term ''initial public offering'' refers to the initial registered equity security offering by an issuer, regardless of whether such issuer is subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, prior to the time of the filing of such issuer's registration statement.

.110 For purposes of this Rule, a secondary offering shall include a registered follow-on offering by an issuer or a registered offering by persons other than the issuer involving the distribution of securities subject to Regulation M of the Securities Exchange Act of 1934.

Rule 351 Reporting Requirements

(a)–(e) No change

(f) *Each member and member organization that prepares, issues or distributes communications to the public, (including but not limited to, research reports, media presentations and interviews), is required to submit to the Exchange annually, a letter of attestation signed by a senior officer or partner that the member or member organization has established and implemented procedures reasonably designed to comply with the provisions of Rule 472.*

* * * * *

.11 For purposes of Rule 351(f), the attestation must be submitted by April 1 of each year.

.12 The term ''research reports'' is defined in Rule 472.10.

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, NASDR and the NYSE included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. NASDR and the NYSE have prepared summaries, set forth in Sections A, B, and C below.

A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. NASD's Purpose

According to NASDR, it has worked closely with the NYSE to develop rules to address conflicts of interest that can arise when research analysts recommend equity securities in research reports and public appearances. NASD's proposed rule change is intended to improve the objectivity of research and provide investors with more useful and reliable information when making investment decisions.

To that end, the NASD's proposed rule change generally would minimize the influence that a member's investment banking department has over its research department and would restrict analysts' personal trading of securities. The NASD's proposed rule change also would require disclosure of financial interests held by the member firm, the analyst and his or her family members, and any other material conflict of interest associated with a recommendation of a security. The NASD's proposed rule change also would require firms to clarify the meanings of their research ratings and provide historical price and ratings distribution data in research reports to better enable investors to evaluate and compare the quality of research.

A more detailed discussion of the proposed rule's provisions follows.

a. Definitions

The terms ''research analyst'' and ''research report'' are used frequently throughout the NASD's proposed rule change. ''Research analyst'' would be defined to mean an ''associated person who is principally responsible for, and any associated person who reports directly or indirectly to such a research analyst in connection with preparation of the substance of a research report, whether or not any such person has the job title of 'research analyst.' '' ''Research report'' would be defined to mean ''a written or electronic communication that the member has distributed or will distribute with reasonable regularity to its customers or the general public, which presents an opinion or recommendation concerning an equity security.''

Accordingly, the term ''research analyst'' would not include every associated person who may express an opinion on an equity security. Thus, for example, most mutual fund portfolio managers are not principally responsible for the preparation of ''research reports'' as defined by the

NASD's proposed rule change. Consequently, a mutual fund portfolio manager generally would not be deemed to be a ''research analyst,'' even if the portfolio manager is an associated person of a member firm and discusses the mutual fund's portfolio holdings in a television interview.

The NASD specifically requests comments on these definitions. Would the definition of ''research analyst'' have any regulatory gaps? Would it impose any unnecessary burdens on members, particularly by including any associated person who reports to a research analyst? Would the definition of ''research report'' properly exclude those communications that do not present the types of concerns that the proposed rule change is designed to address?

The NASD's proposed rule change would require research analysts to make various types of disclosures in their public appearances. The term ''public appearance'' would be defined to include any participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public speaking activity in which a research analyst makes a recommendation or offers an opinion concerning an equity security. Consequently, this term also would include any public conference call in which a research analyst expresses an opinion on an equity security. The NASD's proposed rule change would require only that a research analyst make these disclosures. An independent decision by the sponsor of the public appearance, such as a television program sponsor, to edit out the required disclosures, would not constitute a violation of the NASD's proposed rule. NASD requests comment on whether the scope of this definition is adequate to address the concerns raised by a research analyst's public speaking activities and whether it might impose any unnecessary burdens on members or their research analysts.

The term ''member of a research analyst's household'' is used in connection with the proposed rule change's personal trading restrictions and disclosure requirements. NASD proposes to define this term to include any individual whose principal residence is the same as the research analyst's residence. Thus, it would include any family member living with the research analyst, as well as any other individual living in the same principal residence. NASD requests comment on whether this definition is appropriate.

The term ''research analyst account'' is used in connection with the NASD's proposed rule change's personal trading restrictions. The NASD proposes to define this term to include any account in which a research analyst or a member of the research analyst's household has a beneficial interest, or over which such analyst or household member has discretion or control. The term would not include an investment company registered under the Investment Company Act of 1940 that is managed by a research analyst or a member of the analyst's household.

b. Investment Banking Department Relationship With Research Department

NASD believes that a potential conflict exists between a firm's responsibility to provide fair, objective and unbiased research and its interest in obtaining or retaining investment banking business from a company that is the subject of a research report (''subject company''). The NASD proposes to adopt several measures to address this potential conflict.

(1) Supervision and Control of Research Department

The NASD's proposed rule change would prohibit a member's investment banking department from supervising or controlling the member's research department and from reviewing or approving research reports before their publication. ''Investment banking department'' is proposed to be defined to include any department or division, whether or not identified as such, that performs any investment banking service on behalf of the member. ''Investment banking services'' is proposed to encompass a broad array of services typically offered to investment banking clients, including acting as an underwriter in an offering for the issuer, acting as a financial advisor in a merger or acquisition, providing venture capital, equity lines of credit, PIPES or similar investments, or serving as placement agent for the issuer. NASD requests comment on whether this definition of ''investment banking services'' is appropriate or inclusive enough in light of the purposes of the proposed rule change.

The NASD believes that this provision would better ensure that research is shielded from the influence of the investment banking department's relationship with the subject company. Under the NASD's proposed rule change, investment banking personnel could communicate with research personnel concerning a research report before the report's publication only to ensure the report's factual accuracy and to screen for conflicts of interest. The NASD's proposed rule change would require an authorized legal or compliance official to act as intermediary for all such communications. The term ''legal or compliance department'' as used in the proposed rule change would include any department or division that is principally responsible for compliance with applicable securities laws, regardless of whether the department or division is named ''legal'' or ''compliance.'' The NASD's proposed rule change would not restrict or impose conditions on any communication between a research department and an investment banking department that does not concern a proposed research report.

The NASD's proposed rule change also would address the concern that the subject company may attempt to influence the conclusions provided in a research report. The NASD's proposed rule change would prohibit a member from submitting a research report to the subject company for approval. The NASD's proposed rule change would allow the subject company to review only certain sections of a research report before its publication to ensure that it is factually accurate. However, a member could not submit in advance to the subject company those sections of the report that contain the research summary, the rating or the price target. The NASD's proposed rule change would require that if a research analyst intends to make changes to the proposed rating or price target after review by the subject company, the research analyst would first have to receive written approval from the member's legal and compliance department.

The NASD requests comment on the ''gate-keeping'' functions that the proposed rule change would impose on the legal or compliance department. The NASD recognizes that these responsibilities may require members to hire additional legal or compliance staff and to dedicate resources to these gate-keeping functions. Nevertheless, the possibility that investment banking departments exert undue influence over the contents of a research report has necessitated the proposed gate-keeping provisions. NASD requests comment on whether these provisions adequately address these concerns about undue influence and whether any alternative provisions would be equally effective. In addition, NASD requests comment on whether the gate-keeper approach that the proposed rule change would impose with respect to contact with the subject company also should apply to contacts with the investment banking department?

(2) Research Analyst's or Member's Investment Banking Compensation

The NASD's proposed rule change would prohibit a member from tying analyst compensation to specific investment banking transactions. The NASD requests comment on whether this provision might impose unnecessary burdens on smaller members that may have the same employee perform investment banking and research services. To the extent that this provision might impose such unnecessary burdens, the NASD requests comment on how widespread this problem would be? Further, NASD requests comment on what, if any, alternative measure would respond to the concerns that this provision is intended to address without imposing these burdens?

Since research analysts, as part of their job responsibilities, advise investment banking departments concerning such matters as whether a potential underwriting client is financially or operationally prepared for an initial public offering, the NASD's proposed rule change would permit a member to compensate its research analysts based on their overall performance, which may include these services to the investment banking department. However, a member would have to disclose in research reports if a research analyst received compensation based in whole or in part on the member's investment banking revenues.

The NASD's proposed rule change also would require a member to disclose in research reports if the member or its affiliates received compensation from the subject company within the last 12 months, or expected to receive compensation within the next three months following publication of the report. This disclosure requirement, like all of the other disclosure requirements of the proposed rule change, would mandate definitive disclosure. Ambiguous or conditional language, such as disclosure that the member ''may have'' received compensation from the subject company, would not comply with the disclosure requirements of the proposed rule change.

The NASD recognizes the possibility that this requirement might necessitate disclosure of compensation related to non-public transactions. The NASD believes that this type of compensation presents the same conflicts as the receipt of compensation related to transactions that have been publicly disclosed. Moreover, the NASD does not believe that the proposed rule change would alert the research department or the investing public concerning non-public transactions, for at least two reasons. First, the proposed rule change would require only disclosure that compensation was received by the member or one of its affiliates. It would not require disclosure concerning the nature of the transaction, such as the fact that the member received the compensation in connection with non-public merger and acquisition services, or even that the compensation was received by the member (as opposed to one of its affiliates that is not engaged in investment banking). Second, the term ''compensation'' is to be broadly interpreted to include the receipt of any consideration from the subject company. Given the breadth of the meaning of ''compensation,'' the NASD believes that this disclosure requirement should not alert the research department whether the compensation related to a non-public transaction. Nevertheless, the NASD does request comment on the efficacy of this disclosure requirement, and whether any alternative, definitive disclosure would be effective.

The NASD proposes that a research analyst would have to disclose in public appearances if the issuer of a recommended security is a client of the member or its affiliates, provided the analyst knows or has reason to know this fact. For purposes of this provision, the NASD proposes that an issuer would be deemed a ''client'' of the member if the member or its affiliates received compensation from the issuer within the previous twelve months, or reasonably expects to receive compensation from the issuer within the next three months. This disclosure requirement thus would not apply with regard to a non-public transaction in which the issuer is a client of the member or its affiliates and the research analyst does not know and has no reason to know of this fact due to an information barrier imposed by the member.

c. Promises of Favorable Research

The proposed rule change would include a provision that expressly prohibits a member from offering or threatening to change favorable research, a specific research rating or a specific price target as consideration or inducement for the receipt of business or compensation. According to the NASD, such behavior already constitutes a violation of just and equitable principles of trade (NASD Rule 2110) and could violate the anti-fraud provisions of the federal securities laws. The proposed rule change would make this prohibition explicit. A member would violate this provision simply by making such an offer or threat, whether or not the member provided any service to or received any compensation or business from the issuer.

d. Quiet Periods

The NASD's proposed rule change would impose two ''quiet periods'' on the issuance of research reports. The proposed rule change would prohibit a member from issuing a research report regarding a subject company for which the member acted as an underwriting manager or co-manager for 40 days following the date of an initial public offering and 10 days following the date of a secondary offering. For purposes of this provision, the ''date'' of an IPO is proposed to be the date on which the IPO's registration statement becomes effective. The ''date'' of a secondary offering is proposed to be the date on which a member commences sales on behalf of an issuer or selling security holders pursuant to an underwriting agreement or similar agreement that governs the transaction.

According to the NASD, the quiet periods are intended to reduce a manager's ability to improperly reward the subject company for its underwriting business by publishing favorable research after completion of the offering. The NASD's proposed rule change would not prohibit a manager or co-manager from issuing a research report during these quiet periods due to significant news or a significant event concerning the subject company. In general, NASD proposes that a ''significant'' news item or event would constitute a news item or event that is expected to have a material impact on, or that reflects a material change to, the subject company's earnings, operations or financial condition.

The NASD specifically seeks comment on the proposed quiet period after secondary offerings. In addition, the NASD seeks comment on the following: (1) How significant is a manager's opportunity to engage in this behavior with respect to a public company that conducts a secondary offering?; (2) Should the NASD adopt an exception to this provision for seasoned companies qualified to issue their securities in an initial public offering under Form S–3?; (3) Would the $75 million public float and one-year reporting requirements applicable to S–3 companies provide a sufficiently high threshold to ensure that the quiet period for secondary offerings is effective?; (4) Would an alternative standard, such as the $150 million public float value for actively traded securities under Regulation M, be more appropriate?

NASD also requests comment on whether the proposed quiet periods should apply not only to the issuance of research reports, but also to any public appearance by a research analyst employed by the manager or co-manager of the underwriting.

e. Research Analysts' Personal Trading

The NASD's proposed rule change would impose certain restrictions on an analyst's personal trading activities to help ensure that research reports and recommendations are not influenced by the prospect of personal enrichment and to ensure that analysts do not profit from the issuance of a research report or change in a rating or price target. The NASD's proposed rule change would prohibit a research analyst account (which would include any account of the research analyst or member of the analyst's household, and any account over which the analyst or household member has discretion or control) from purchasing or receiving securities of a company in the industry the analyst covers before that company's initial public offering. According to the NASD, this provision is designed to prevent a research analyst from receiving ''cheap stock'' before the initial public offering of a company that the analyst may subsequently cover.

The NASD's proposed rule change also would prohibit a research analyst account from trading a subject company's securities during a ''blackout'' period beginning 30 calendar days before, and ending five calendar days after, the issuance of a research report or change in the research rating or price target for the subject company's securities. This prohibition would apply not only to transactions in the subject company's securities themselves (including short sales), but also any derivative security, such as an option, right, warrant or future. Furthermore, the NASD's proposed rule change would prohibit a research analyst account from trading in a manner inconsistent with the analyst's most current recommendation concerning a security. Thus, for example, the proposed rule change would prohibit a research analyst from selling or effecting a short sale in a security while maintaining a ''buy,'' ''hold'' or ''neutral'' recommendation.

The NASD's proposed rule change would permit members to adopt certain exceptions to these prohibitions that are reasonable in light of the purposes of the personal trading restrictions. For example, the proposed rule change would permit a transaction within 30 calendar days before the member publishes a research report or changes a rating or price target due to significant news or a significant event concerning the subject company. This exception is designed to ensure that the 30-day blackout provision does not impede the member's ability to publish a research report or change a rating or price target in these circumstances. The exception would require that the member's legal or compliance department pre-approve any research report or change in a rating or price target made in connection with a significant news item or event. The legal or compliance department should consider, among other factors, whether the research analyst knew or had reason to know of the significant news or event before the research analyst account entered into the transaction that occurred less than 30 days prior to the new research report, rating or price target.

The NASD's proposed rule change would permit members to authorize an exception to the blackout period and prohibition of trading against recommendations to allow a research analyst account to trade securities due to significant personal financial circumstances, provided certain conditions are met. Reliance on this provision should be rare. In most cases, a research analyst account should not hold such a significant interest in a subject company's securities as to necessitate reliance on this provision. Moreover, this provision is meant to be narrowly construed to permit an exception in extremely limited circumstances such as when the beneficial owner of a research analyst account must liquidate securities holdings in order to have funds available for an unforeseen medical emergency.

According to the NASD, the restrictions on personal trading would not apply to transactions in shares of registered diversified investment companies as defined under Section 5(b)(1) of the Investment Company Act of 1940, even if the diversified investment company held shares of a subject company.[4] NASD also proposes that the restrictions would not apply to transactions in holdings of any other investment fund (including a non-diversified investment company) over which neither the research analyst nor a household member has any investment discretion or control, provided that the fund meets certain conditions. First, the research analyst account could not own more than one percent of the fund's assets. Second, the fund could not invest more than 20 percent of its assets in securities of issuers principally engaged in the same types of business as companies that the research analyst covers. Third, the fund could not distribute securities in kind to the research analyst or household member before the issuer's initial public offering. The NASD requests comment on whether this investment fund exception would create a regulatory gap that could undermine the effectiveness of the personal trading restrictions or, would it impose any unnecessary restrictions on a research analyst's ability to invest appropriately in certain investment funds?

f. Members' or Research Analysts' Financial Interests

The NASD's proposed rule change would impose several disclosure requirements on members and research analysts concerning their financial interest in a subject company's securities. First, the NASD's proposed rule change would require members and research analysts to disclose in research reports and public appearances if the research analyst (or a member of the research analyst's household) has a financial interest in a subject company, and the nature of the financial interest. According to the NASD, this ''financial interest'' could include any option, right, warrant, future, long or short position in the subject company's securities. The NASD requests comment on whether members and research analysts also should be required to disclose if any discretionary account managed by the research analyst or a member of the analyst's household (other than a registered investment company) has a financial interest in a subject company, and the nature of this interest.

Second, the NASD's proposed rule change would require members and analysts to disclose if the member or its affiliates beneficially own 1% or more of any class of a subject company's common equity securities. Members could determine whether they or their affiliates ''beneficially own'' a security by relying upon the standards set forth

[4] According to the NASD, under Section 5(b)(1) of the Investment Company Act of 1940, a ''diversified'' investment company's assets are divided into two baskets, one representing 75% of its assets and one representing 25% of its assets. The restrictions focus on the 75% basket: its assets must consist of cash, government securities, securities of other investment companies, and ''other securities.'' The ''other securities'' of a single issuer may not account for more than 5% of the fund's assets, and the fund may not hold more than 10% of a single issuer's voting securities. The 25% basket is not subject to these restrictions. 15 U.S.C. 80a–5 (b)(1).

in Section 13(d)[5] and section 13(g)[6] of the Act, and the rules thereunder.

Finally, the NASD's proposed rule change contains a provision that would require disclosure in research reports and public appearances of any other actual, material conflict of interest of which the analyst knows or has reason to know. The NASD requests comment on this provision. Specifically, the NASD solicits comment on what types of guidance would members need in order to know when this disclosure is necessary? The NASD's proposed rule change would explicitly require that members and their research analysts comply with the disclosure requirements of other applicable laws and regulations, including NASD Rule 2210 and the anti-fraud provisions of the federal securities laws. In light of this explicit requirement, the NASD requests comment on whether the general admonishment to disclose ''other, actual material conflicts of interest'' is necessary.

g. Other Disclosures

The NASD's proposed rule change would require additional disclosures in research reports to clarify the meaning of a member's ratings system and provide investors with better information to evaluate and compare the quality of a firm's research and the influence of possible conflicts on the assignment of ratings.

First, the NASD's proposed rule change would require that research reports disclose the meaning of all ratings used in the member's rating system. The NASD's proposed rule change also would require that the definition of each rating be consistent with its plain meaning. For example, a ''hold'' rating could not mean that an investor should sell the security.

Second, the NASD's proposed rule change would require a member to disclose in its research reports the percentage of all securities rated by the member to which the member would assign a ''buy,'' ''hold/neutral'' or ''sell'' rating, regardless of whether the member's rating system uses other categories. The NASD's proposed rule change would require a member to determine based on its own rating system into which of the three categories each securities rating falls. Thus, for example, a rating of ''market outperform'' or ''strong buy'' might constitute a ''buy'' under this requirement. The member then would provide the percentage of all of its ratings in each of these categories. For example, a research report might disclose that the member has assigned a ''buy'' rating to 70% of the securities that it follows, a ''hold'' rating to 25%, and a ''sell'' rating to 5% (even if the member employs a system that assigns five different ratings to the securities that it follows). NASD requests comment on whether another set of terms would be more appropriate than ''buy,'' ''hold/neutral'' or ''sell,'' such as a numerical rating system of ''one,'' ''two'' and ''three.''

Third, the NASD proposes that the member would have to disclose the percentage of subject companies within each of these three rating categories for which the member has provided investment banking services within the previous twelve months. For example, if 20 of the 25 companies that a member categorizes with a ''buy'' rating are investment banking clients , the member would have to disclose that 80 percent of the companies in the ''buy'' rating category are its investment banking clients. NASD proposes that all of this information would have to be current as of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than 15 calendar days after the most recent calendar quarter).

Fourth, the NASD's proposed rule change would require that research reports present a price chart that maps the historical price movements of the recommended security and indicates those points at which the member assigned or changed a research rating or price target. The NASD believes that such a chart could enable investors to compare the ratings and price targets that a member has assigned with the stock performance of the recommended security.[7]

The NASD proposes that this disclosure requirement would apply only to securities on which the member has assigned a rating for at least one year, in recognition of the long-term nature of many ratings. The NASD proposes that the provision also would require that the price chart cover the period that the member has rated the security or three years, whichever is shorter. The NASD proposes that the price chart would have to be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than 15 calendar days after the most recent calendar quarter).

Fifth, the NASD's proposed rule change would require disclosure in research reports of the valuation methods used in developing the research rating price target. The price target must have a reasonable basis and must be accompanied by a disclosure concerning the risks that may impede achievement of the price target. The requirement that the price target have a reasonable basis is based upon the current requirement in NASD Rule 2210(d)(2)(B)(i) that any member securities recommendation in an advertisement or item of sales literature have a reasonable basis.

Sixth, the NASD's proposed rule change would require the member to disclose if it makes a market in the subject company's securities. According to the NASD, the market-making provisions are similar to requirements that exist under NASD Rule 2210. Ambiguous or conditional language, such as the fact that a member ''may'' make a market, or ''usually'' makes a market in the security, would not comply with this disclosure requirement.[8]

Seventh, the NASD proposed rule change would require disclosure in research reports and public appearances of whether a research analyst or a member of the research analyst's household is an officer, director or advisory board member of the subject company. The NASD requests comment as to whether this disclosure requirement should extend to *any* employment with the subject company, including recent past employment.

Finally, in addition to the disclosure required by this proposed rule change, members and research analysts would be required to provide disclosure in research reports and public appearances that is required by applicable law or regulation, including NASD Rule 2210 and the anti-fraud provisions of the federal securities laws. In particular, NASD Rule 2210(d)(2)(B)(i) provides that, in making a recommendation in advertisements and sales literature, a member must disclose, as applicable:

- That the member usually makes a market in the recommended security, or that the member or associated persons will sell to or buy from customers on a principal basis;
- That the member and/or its officers or partners own options, rights or warrants to purchase any of the securities of the recommended issuer,

[5] 15 U.S.C. 78m(d).

[6] 15 U.S.C. 78m(g).

[7] The NASD submitted a sample price chart that complies with this proposed rule provision as Exhibit 3 to its Form 19b–4, which is part of the public file and can be inspected at the Commission's Public Reference Room, as well as at the principal office of the NASD.

[8] To the extent that there are differences in the disclosure requirements regarding market making between the proposed rule change and current NASD Rule 2210, the proposed rule change provisions would govern.

unless the extent of such ownership is nominal; and

• That the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last three years.

To the extent that the proposed rule change's disclosure requirements regarding market-making activities differ from those in Rule 2210(d)(2)(B)(i), the proposed rule change provisions would govern. However, the other disclosure requirements of Rule 2210(d)(2)(B)(i) would continue to apply to advertisements and sales literature (including research reports) in addition to the proposed rule change's disclosure requirements. Thus, a member would continue to be required to disclose in research reports if the member buys the recommended securities from, or sells them to, customers on a principal basis; if the member or its officers or partners own options, rights or warrants to purchase any securities of the recommended issuer in any amount (unless the extent of such ownership is nominal); and if the member was a manager or co-manager of a public offering of the recommended issuer's securities within the last three years.

The NASD proposes that disclosures required by the proposed rule change either would have to be presented on the front page of a research report, or the report's front page would have to refer to the page on which the disclosures are found. The NASD's proposed rule change would require disclosures to be clear, comprehensive and prominent. Ambiguous or conditional disclosures would not meet this standard.

h. Supervisory Procedures/Reporting Requirements

The NASD's proposed rule change would require each member that is subject to the proposed rule to adopt written supervisory procedures reasonably designed to ensure that the member and its employees comply with the rule. The NASD also proposes that a member's senior officer also would have to attest annually to the NASD that the member has established and implemented procedures reasonably designed to comply with the rule. The NASD believes that this provision is similar to NYSE Rule 351, which requires NYSE members to submit to the NYSE annually a letter signed by a senior officer of a member that the member has met certain supervisory requirements. The NASD requests comment on whether attestation to the NASD is necessary, or whether this provision should simply require members to maintain records of such annual attestations. The NASD also requests comment as to whether this attestation should be submitted only to a member's designated examining authority (generally the NYSE or the NASD).

2. NASD's Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) [9] of the Act, which require, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that this proposed rule change will eliminate or expose conflicts of interest and thereby significantly curtail the potential for fraudulent and manipulative acts. The NASD further believes that the proposed rule change will provide investors with better and more reliable information with which to make investment decisions.

3. NYSE's Purpose

According to the NYSE, its Rule 472 establishes standards governing member and member organization communications with the public. In particular, NYSE Rule 472.40(2) requires disclosure by member organizations as to certain relationships with recommended issuers, *e.g.,* if the member organization participates in a public offering, makes a market or has positions in the securities of a company that is recommended in a communication to the public.

a. Background

According to the NYSE, during 2000 and 2001, the stock market decline and negative news reports brought attention to the issue of research analysts' conflicts of interest as well as to the adequacy of disclosure in communications with the public that recommend securities. According to the NYSE, the SEC expressed particular concern about analysts and others who make stock recommendations during TV interviews and had additional concerns about written communications in which disclosures were vague and buried in hedge clauses or footnotes.

According to the NYSE, in 2000, the NYSE and NASDR began working on proposed amendments to NYSE and NASDR rules governing communications with the public (NYSE Rule 472 and NASDR Rule 2210) to strengthen the disclosure requirements.

In June 2001, the Securities Industry Association's (''SIA'') Ad Hoc Committee on Analyst Integrity issued new guidelines for research analysts entitled ''Best Practices for Research.'' These best practices, which do not have the effect of rules of the SEC or SROs, suggested prohibitions on linking analysts' compensation to investment banking deals; on analysts' trading against their own securities recommendations; and on approving research by investment banking departments and subject companies. The guidelines also recommended disclosure of ownership positions in securities of companies that research analysts cover.

In July 2001, the Association for Investment Management and Research (''AIMR'') published for comment an issues paper, ''Preserving the Integrity of Research,'' in which it identified conflicts of interest and pressures on research analysts that may bias research and recommendations.

In addition, during the second half of 2001, several broker-dealers announced that they would either prohibit analysts from owning shares in companies they cover or require their analysts to disclose ownership stakes in such companies.

During June and July 2001, the House Committee on Financial Service's Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises (the ''Subcommittee'') held hearings on the sources and ramifications of analysts'' conflicts of interest and on the adequacy of disclosures in communications to the public.

During these hearings, according to the NYSE, the following industry issues were addressed: [10] research analysts were ''subject to several influences that may affect the integrity and the quality of their analysis and recommendations;'' analysts provide assistance to investment banking by ''initiating research coverage on prospective investment banking clients;'' ''many firms pay their analysts largely based upon the profitability of their investment banking unit;'' ''investment bankers at some firms are involved in evaluating the firm's research analysts to determine their compensation;'' and several ''firms reported that investment banking had input into research analysts' bonuses.''

Further, according to the NYSE, it was found that ''analysts were invited to invest'' in ''companies' private

[9] 15 U.S.C. 78o–3(b)(6).

[10] July 31, 2001 testimony given by then SEC Acting Chairman Laura Unger, before the Subcommittee.

placements, which were not available to the public generally,'' and ''if the company went public and the analyst's firm underwrote the IPO, the analyst always issued positive research on the company.'' Also, ''firms did not always know whether their research analysts owned stock in companies they underwrote and upon which their analysts then issued research reports.''

Additionally, ''analysts sometimes provided investment bankers with prior notice of changes in recommendation,'' and in some instances, ''analysts provided investment bankers and client management with advance notice of a pending change in the analyst's recommendations.''

According to the NYSE, it was also found that some research analysts issued ''booster-shot'' research reports, whereby they reiterated ''buy recommendations shortly before, or just after, the lock-up period expired.'' Further, it was noted that some analysts ''executed trades for their personal accounts that were contrary to their recommendations in their research reports.'' In some instances, ''analysts'' ownership in stock of the covered company was not disclosed in the research report at all.''

In addition, according to the NYSE, it was found that ''sell-side analysts routinely recommend securities during public appearances in the media (such as on financial television and radio programs), but rarely reveal any conflicts of interest to investors.'' Finally, ratings categories used by firms in their research reports ''may be unclear to investors'' and that ''full-service broker-dealers use a variety of undefined terms to describe their investment recommendations,'' and that ''the wide variety of terms may confuse investors.''

The report of these hearings deemed the SIA best practices to be inadequate as a means of eliminating and/or mitigating the systemic conflicts of interest confronting analysts and the biased research attributable to such conflicts. According to NYSE, the Subcommittee concluded that rulemaking would be a more effective way to deal with these issues.

In November 2001, the NYSE and NASDR established a joint SRO/industry committee to elicit industry comment on the proposal on communications with the public developed to address Congress' concerns. The proposal also incorporates as rules many of the SIA best practices, and recommendations from the AIMR issues paper.

b. Proposed Amendments to NYSE Rule 472

As proposed, the NYSE Rule amendments will address and remediate the issues discussed above in regard to analysts' conflicts of interest and lack of adequate disclosure.

NYSE's proposed rules are intended to reinforce the integrity of the process and help rebuild investors' faith in research and in the equities markets as a whole. The amendments should impact the way research analysts work within their firms and with subject companies. As an unavoidable consequence, NYSE believes that this will add to the firms' costs and administrative burden of operating and overseeing the research process.

The most significant changes are as follows:

(1) Proposed amendments to NYSE Rule 472 would place the following prohibitions and/or restrictions on Investment Banking Department, Research Department and Subject Company Relationships and Communications:

- Research Department personnel or others engaged in the preparation of research reports may not be subject to the supervision or control of the Investment Banking Department (Proposed NYSE Rule 472(b)(1)).
- Research reports may not be subject to review or approval prior to distribution by the Investment Banking Department (Proposed NYSE Rule 472(b)(1)).
- The NYSE believes that analyst's responsibility to provide fair, objective and unbiased research may be compromised if, at the same time, the analyst is involved with and/or supervised by the member or member organization's Investment Banking Department responsible for taking a company public or participating in other types of equity underwritings.

The NYSE's proposed rule change would address this potential conflict by prohibiting investment banking supervision and control, and thus should protect research analysts from undue influence by the Investment Banking Department. Further, NYSE believes that this prohibition would be a codification of one of the SIA's Best Practices recommendations.

- An exception is provided for written and oral communications, intermediated through the Legal or Compliance Department, to verify the accuracy of information and to identify potential conflicts of interest (Proposed NYSE Rule 472(b)(2)(i) and (ii)).
- This limited exception would further the purpose of the NYSE's proposed rule change in that research analysts will be shielded from pressure and influences of investment banking, while providing for the issuance of factually accurate research reports. Moreover, NYSE believes that the Legal or Compliance Department intermediation requirement is consistent with and furthers the purpose of both Federal securities laws and NYSE rules governing information barriers.[11]
- The subject company may not review or approve a research report prior to its distribution (Proposed NYSE Rule 472(b)(3)).
- However, the subject company may review sections of draft research reports excluding the research summary, research rating or price target to verify facts, provided the Legal or Compliance Department receives a complete draft prior to submission to the subject company (Proposed NYSE Rule 472(b)(3)(i)).
- After submission of the draft research report to the subject company, any changes in the proposed rating or price target must be justified by the Research Department, and receive prior written authorization from the Legal or Compliance Department (Proposed NYSE Rule 472(b)(3)(ii)).

The NYSE believes that its proposed rule change addresses concerns raised by AIMR in its issues paper that a subject company may attempt to pressure an analyst to issue a favorable research recommendation provided in a research report. Moreover, should an analyst change a recommendation on a subject company, after limited review by the subject company, such change would have to be justified to, and approved by, the Legal or Compliance Department.

The NYSE recognizes that the proposed rule amendment may require members and member organizations to make additions to their Legal or Compliance Departments, with concomitant financial costs to the members and member organizations.

- The subject company may not be notified of a ratings change until after the close of trading in the principal market one business day prior to the announcement of the change (Proposed NYSE Rule 472(b)(3)(iii)).

The NYSE believes that limiting advance notification of the ratings change should substantially reduce the

[11] According to NYSE, Section 15(f) of the Act provides, in part, that every registered broker or dealer shall establish, maintain, and enforce written policies and procedures designed to prevent the misuse of material non-public information. 15 U.S.C. 78o(f). *See also* NYSE Rules 98, 342, and 351.

possibility of the subject company and its insiders from taking advantage of such knowledge to their benefit, and to the detriment of its shareholders.

(2) Proposed amendments to NYSE Rule 472 prohibit and/or restrict the following in connection with associated persons and/or their household members and to any account in which an associated person has a financial interest or over which the associated person exercises discretion or control, in preparing research reports:

• Prohibits compensation linked to specific investment banking services transactions (Proposed NYSE Rule 472(h)).

• Prohibits ownership positions (including purchasing or receiving pre-IPO shares) if the issuer is principally engaged in the same type of business or industry classification as companies which the associated person covers in research reports (Proposed NYSE Rule 472(e)(1)).

• Prohibits trading in recommended securities thirty (30) days prior to and five (5) days after the issuance of research reports, changes in rating or price target (Proposed NYSE Rule 472(e)(2)).

• Prohibits trades contrary to the analyst's current recommendation (Proposed NYSE Rule 472(e)(3)).

The proposed amendments include exceptions to the above prohibitions for:

• A significant unanticipated change in the personal financial circumstances which is pre-approved by the Legal or Compliance Department (Proposed NYSE Rule 472(e)(4)(i));

• Thirty (30) and five (5) day blackout period for the issuance of research reports, change in rating or price target attributable to significant news or events regarding the subject company which are pre-approved by the Legal or Compliance Department (Proposed NYSE Rule 472(e)(4)(ii));

• Sale transactions for associated persons new to the member or member organization within thirty (30) days of employment (Proposed NYSE Rule 472(e)(4)(iii)) or being assigned the responsibility of preparing research reports with respect to a subject company (Proposed NYSE Rule 472(e)(4)(iv)); and

• Transactions in accounts not controlled by the associated person, *e.g.,* certain investment funds (Proposed NYSE Rule 472(e)(4)(v)), or registered investment company (Proposed NYSE Rule 472(e)(4)(vi)).

The NYSE believes that prohibitions on tying analyst compensation to specific investment banking deals, or on analyst ownership of pre-IPO shares in subject companies would help eliminate incentives analysts and members or member organizations may have to publish favorable research on such subject companies.

The NYSE believes that the proposed rule change would also impose certain restrictions on an analyst's personal trading activities to help ensure that research reports and recommendations are not influenced by the prospect of personal enrichment.

Further, the NYSE proposed rule change would prohibit a research analyst from trading in a manner contrary to the analyst's most current recommendation concerning a security. Thus, for example, the NYSE proposed rule change would prohibit a research analyst from selling a security while maintaining a ''buy'' recommendation.

(3) Proposed amendments to NYSE Rule 472 place the following prohibitions and/or restrictions on members or member organizations:

• The publishing of research reports within forty (40) calendar days of the completion of an initial public offering and ten (10) calendar days of the completion of a secondary offering in which a member or member organization acted as a manager or co-manager (Proposed NYSE Rule 472(f)(1) and (2)).

• An exception to the forty (40) and ten (10) day quiet period for a research report issued due to significant news or events about the issuer, provided it is pre-approved by the Legal or Compliance Department (Proposed NYSE Rule 472(f)(3)).

• Offering favorable research to companies as consideration or inducement for their business is prohibited (Proposed NYSE Rule 472(g)).

While NYSE recognizes that efficient markets require the dissemination of information on publicly traded companies, the proposed quiet periods are intended to minimize the concern that a managing underwriter has the ability to reward the subject company for its underwriting business by publishing favorable research soon after completion of the offering.

As proposed, the forty (40) and ten (10) calendar day quiet periods exceed those provided for under the federal securities laws.[12] Although the proposed quiet periods are longer than what is currently mandated, NYSE believes that they are warranted.

Recognizing that markets may be volatile, the proposed rule change would not prohibit a manager or co-manager from issuing a research report during these quiet periods due to significant news or a significant event concerning the subject company. In general, a ''significant'' news item or event is one that is expected to have a material impact on, or that reflects a material change to, the subject company's earnings, operations or financial condition.

The NYSE proposed rule change would include a provision that expressly prohibits a member or member organization from offering favorable research, a specific research rating or a specific price target as consideration or inducement for the receipt of business or compensation. While, according to NYSE, such action constitutes a violation of existing just and equitable principles of trade, the NYSE proposed rule change makes this prohibition explicit.

(4) Proposed amendments to NYSE Rule 472 impose requirements on members, member organizations, and associated persons preparing research reports to disclose the following in written communications and public appearances:

• whether, as of five (5) days prior to the publication of a research report, a member or member organization owns a position in excess of 1% of any class of common equity securities of the subject company (Proposed NYSE Rule 472 (k)(1)(i)(a));

• the associated person's or household member's financial interest in the subject company (Proposed NYSE Rule 472(k)(1)(i)(b));

• any actual, material conflict of interest of the member or member organization which the associated person knows or has reason to know exists at the time of the issuance of a research report or public appearance (Proposed NYSE Rule 472(k)(1)(i)(c));

• whether the member or member organization received compensation from subject companies within the past twelve (12) months or reasonably expects to receive compensation in the next three (3) months (Proposed NYSE Rule 472(k)(1)(ii)); and

• whether the associated person or household member is an officer, director, or advisory board member of the recommended issuer (Proposed NYSE Rule 472(k)(1)(iii)).

[12] According to NYSE, currently Rule 174(d) of the Securities Act of 1933 provides for a twenty-five (25) day prospectus delivery requirement for an issuer's IPO if the security is to be listed on an exchange or authorized for inclusion in an interdealer quotation system such as Nasdaq. The twenty-five (25) day quiet period coincides with the twenty-five (25) day prospectus delivery requirement under this rule. In addition, according to NYSE, the restrictions regarding publication of research reports in Rule 101 of Regulation M do not apply to research reports that comply with Rules 138 or 139 (available to S–2 and/or S–3 issuers) of the Securities Act.

NYSE proposes that all required disclosures must be clear, comprehensive and on the first page of a research report or must reference the reader to the page in which it is found (Proposed NYSE Rule 472(k)(2)).

As noted above, the NYSE proposed rule change would require a member or member organization to disclose in research reports whether the member, member organization or its affiliates received compensation from the subject company within the last 12 months, or reasonably expects to receive compensation within the next three months following publication of the research report. According to NYSE, this requirement would mandate definitive disclosure. Ambiguous or conditional language, such as disclosure that the member or member organization ''may have'' received compensation from the subject company, would not comply with the disclosure requirements of the proposed rule change.

The NYSE recognizes the possibility that this requirement might include compensation related to non-publicly announced transactions. However, both publicly announced and non-publicly announced related compensation present the potential for conflicts. Moreover, the NYSE does not believe that the proposed rule change would alert the Research Department or the investing public concerning non-public transactions, for at least two reasons.

First, the NYSE proposed rule change would require only disclosure that compensation was received by the member, member organization or its affiliates. It would not require disclosure concerning the specific amount received or expected to be received or the nature of the transaction, such as the fact that the member, member organization or its affiliates received the compensation in connection with non-public merger and acquisition services, or even that the compensation was received by the member or member organization (as opposed to one of its affiliates that is not engaged in investment banking). Second, according to NYSE, the term ''compensation'' is to be broadly interpreted to include the receipt of any consideration from the subject company. Given the breadth of the meaning of ''compensation,'' this disclosure requirement should not alert the Research Department whether the compensation is related to a non-public transaction.

According to the NYSE, research analysts would have to disclose in public appearances if the issuer of a recommended security is a client of the member, member organization or its affiliates, provided the analyst knows or has reason to know this fact. For purposes of this provision, an issuer would be deemed a ''client'' of the member, member organization or its affiliates, if the member, member organization or its affiliates received compensation from the issuer within the previous twelve months, or reasonably expects to receive compensation from the issuer within the next three months. This disclosure requirement thus would not apply with regard to a non-public transaction in which the issuer is a client of the member, member organization or its affiliates and the research analyst does not know and has no reason to know of this fact due to an information barrier imposed by the member or member organization.

(5) The proposed rule change would require additional disclosures in research reports to clarify the meaning of a member's or member organization's ratings system and provide investors with better information to evaluate and compare the quality of a member or member organization's research and the influence of possible conflicts in the assignment of ratings (Proposed NYSE Rule 472(k)(2)(iv)).

(6) Proposed amendments to NYSE Rule 351 would require members and member organizations to submit to NYSE, annually, a letter of attestation signed by a senior officer or partner, that the member or member organization has established and implemented written procedures reasonably designed to comply with the provisions of NYSE Rule 472 (Proposed NYSE Rule 351(f)). *See also* NYSE Rule 472(c) for the requirement to establish written procedures.

According to the NYSE, the scope of sales practice examinations conducted by NYSE will be expanded to ensure compliance with the new rule amendments.

4. NYSE's Statutory Basis

The Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(5)[13] of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organizations' Statements on Burden on Competition

NASDR and the NYSE do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

1. NASD

Written comments were neither solicited nor received for this proposed rule change. Previously, the NASD published for comment in NASD Notice to Members 01–45 (July 2, 2001) a more limited proposal to amend NASD Rule 2210, Communications With The Public. The NASD received 850 comments in response to that Notice. The NASD has not included a discussion of the comments received on that proposal because the current proposed rule change is significantly different and more comprehensive.

2. NYSE

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the SROs consent, the Commission will:

A. By order approve such proposed rule changes, or

B. institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

The Commission notes that the NASDR and NYSE have worked together to fashion these proposals. However, there are differences in the text of the proposals. The Commission specifically requests comment on the substance of proposed NASD Rule 2711, as amended; NYSE's proposed rule changes to NYSE Rule 472 and NYSE Rule 351; and whether there are any differences between the NYSE proposed Rule 472 and NASD proposed Rule 2711 that present compliance or interpretive issues. The Commission also specifically seeks comment on whether the text or substance of proposed NASD Rule 2711 and current NASD Rule 2210 present compliance or interpretive issues.[14] The Commission notes that, in

[13] 15 U.S.C. 78f(b)(5).

[14] *See, e.g.,* the discussion in Section II.A.1.g. above.

Section II above, the NASD has requested comment on several issues relating to proposed NASD Rule 2711.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal offices of the SROs. All submissions should refer to File Nos. SR–NASD–2002–21 and SR–NYSE–2002–09 and should be submitted by April 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6159 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45525; File No. SR–SCCP–2002–01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees Applicable to Philadelphia Stock Exchange Competing Specialists

March 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 9, 2002, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends SCCP's fee schedule to establish clearly that SCCP's fees, credits, discounts, and other charges which are based upon Philadelphia Stock Exchange (''Phlx'') equity specialists'' specialist activities also apply to competing specialists' specialist activities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clearly establish that any fees and charges (as well as any credits and discounts) included in SCCP's fee schedule which are based upon Phlx equity specialists' specialist activities also apply to competing specialists' specialist activities. On December 21, 2001, the Commission approved a Phlx proposed rule change to adopt rules designed to facilitate the establishment of a competing specialist program on Phlx.[3] The new rules provide for the approval by Phlx's Equity Allocation, Evaluation and Securities Committee of applications by qualified specialist units to act as competing specialists in one or more equity securities. Phlx contemplates commencing a competing specialist program in the near future. Under that program, equity securities traded on Phlx may have both a primary specialist (contemplated to be Phlx's current sole specialist in the security) and one or more competing specialists. At this time, SCCP is proposing to apply all specialist fees and charges (as well as any applicable credits or discounts) to Phlx specialists whether primary or competing.

For these reasons, SCCP believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[4] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants because SCCP will charge the same for primary and competing specialists.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2) thereunder.[6] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 34–45183 (December 21, 2001), 67 FR 118 (January 2, 2002) (order approving SR–Phlx–2001–97).

[4] 15 U.S.C. 78q–1(b)(3)(D).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to the File No. SR–SCCP–2002–01 and should be submitted by April 4, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6161 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

OFFICE OF SPECIAL COUNSEL

Agency Information Collection Activities; Request for Comment

AGENCY: Office of Special Counsel.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and implementing regulations at 5 CFR part 1320, the U.S. Office of Special Counsel (OSC), plans to request approval from the Office of Management and Budget (OMB) for use of three previously approved information collections consisting of customer survey forms.

OSC is required by law to conduct an annual survey of those who seek its assistance. The information collections are used to carry out that mandate. The current OMB approval for these collections of information expires on March 31, 2002; OSC does not plan to use the forms again until the next round of annual surveys beginning on October 1, 2002.

Current and former Federal employees, employee representatives, other Federal agencies, state and local government employees, and the general public are invited to comment on these information collections. Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of OSC functions, including whether the information will have practical utility; (b) the accuracy of OSC's estimate of the burden of the proposed collections 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.

DATES: Comments should be received by May 13, 2002.

ADDRESSES: Kathryn Stackhouse, Attorney, Planning and Advice Division, U.S. Office of Special Counsel, 1730 M Street, N.W., Suite 201, Washington, DC 20036–4505.

FOR FURTHER INFORMATION CONTACT: Kathryn Stackhouse, Attorney, Planning and Advice Division, at the address shown above; by facsimile at (202) 653–5151; or by telephone at (202) 653–8971. The survey forms for collection of information are available for review on OSC's Web site, at www.osc.gov/reading.htm.

SUPPLEMENTARY INFORMATION: OSC is an independent agency responsible for: (1) investigation of allegations of prohibited personnel practices defined by law at 5 U.S.C. 2302(b), and certain other illegal employment practices under titles 5 and 38 of the U.S. Code, affecting current or former Federal employees or applicants for employment, and covered state and local government employees; (2) the interpretation and enforcement of Hatch Act provisions on political activity in chapters 15 and 73 of title 5 of the U.S. Code; and (3) the provision of a secure channel through which Federal employees may make disclosures of information evidencing violations of law, rule or regulation; gross waste of funds; gross mismanagement; abuse of authority; or a substantial and specific danger to public health or safety.

OSC is required to conduct an annual survey of all individuals who seek its assistance. Section 13 of Public Law 103–424 (1994), codified at 5 U.S.C. 1212 note, states, in part: ''[T]he survey shall—(1) determine if the individual seeking assistance was fully apprised of their rights; (2) determine whether the individual was successful either at the Office of Special Counsel or the Merit Systems Protection Board; and (3) determine if the individual, whether successful or not, was satisfied with the treatment received from the Office of Special Counsel.'' The same section also provides that survey results are to be published in OSC's annual report to Congress. Copies of prior years' annual reports are available on OSC's Web site, at www.osc.gov/forms.htm#annual, or by calling OSC at (202) 653–2253.

OSC uses three forms to survey potential respondents in three types of matters closed during the previous fiscal year: Form OSC–48a is sent to complainants who alleged prohibited personnel practices, or other prohibited activities (including violations of the Hatch Act); Form OSC–48b is sent to persons who received a written advisory opinion on the application of the Hatch Act; and Form OSC–48c is sent to covered persons who made whistleblower disclosures to OSC. Each of these forms for information collection is described below. The forms to be submitted to OMB contain some minor modifications to existing forms, including increased use of ''plain English'' and minor format changes. In addition, the estimated number of annual respondents for each survey has been reduced to reflect estimated actual survey response rates, rather than surveys sent.

1. Title of Collection: OSC Survey—Prohibited Personnel Practice or Other Prohibited Activity (Agency Form Number OSC–48a; OMB Control Number 3255–0003)

Type of Information Collection Request: Approval of a previously approved collection of information that expires on March 31, 2002, with some revisions.

Affected public: Current and former Federal employees, applicants for Federal employment, state and local government employees, and their representatives.

Respondent's Obligation: Voluntary.

Estimated Annual Number of Respondents: 682.

Frequency: Annual.

Estimated Average Amount of Time for a Person to Respond: 20 minutes.

Estimated Annual Burden: 227 hours.

Abstract: This form is used to survey current and former Federal employees and applicants for Federal employment who have submitted allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC, and whose matter has been closed during the prior fiscal year (FY), on their experience at OSC. Specifically, the survey asks questions relating to whether the respondent was: (1) apprised of his or her rights; (2) successful at the OSC or at the Merit Systems Protection Board; and (3) satisfied with the treatment received at the OSC.

2. Title of Collection: OSC Survey—Hatch Act Advisory Opinion (Agency Form Number OSC–48b; OMB Control Number 3255–0003)

Type of Information Collection Request: Approval of a previously approved collection of information that expires on March 31, 2002, with some revisions.

Affected public: Current and former Federal employees, applicants for Federal employment, state and local government employees, and their representatives.

Respondent's Obligation: Voluntary.

Estimated Annual Number of Respondents: 65.

Frequency: Annual.

Estimated Average Amount of Time for a Person to Respond: 12 minutes.

Estimated Annual Burden: 13 hours.

Abstract: This form is used to survey those who request a written advisory opinion on the application of the Hatch Act, and whose matter has been closed during the prior FY, on their experience at OSC. Specifically, the survey asks questions relating to whether the respondent was: (1) apprised of his or her rights; (2) successful at the OSC; and (3) satisfied with the treatment received at the OSC.

3. Title of Collection: OSC Survey—Whistleblower Disclosure (Agency Form Number OSC–48c; OMB Control Number 3255–0003)

Type of Information Collection Request: Approval of a previously approved collection of information that expires on March 31, 2002, with some revisions.

Affected public: Current and former Federal employees, applicants for Federal employment, and their representatives.

Respondent's Obligation: Voluntary.

Estimated Annual Number of Respondents: 93.

Frequency: Annual.

Estimated Average Amount of Time for a Person to Respond: 15 minutes.

Estimated Annual Burden: 23 hours.

Abstract: This form is used to survey those who have filed a whistleblower disclosure, and whose matter has been closed during the prior FY, on their experience at OSC. Specifically, the survey asks questions relating to whether the respondent was: (1) apprised of his or her rights; (2) successful at the OSC; and (3) satisfied with the treatment received at the OSC.

Dated: March 8, 2002.

Elaine D. Kaplan,

Special Counsel.

[FR Doc. 02–6168 Filed 3–13–02; 8:45 am]

BILLING CODE 7405–01–S

DEPARTMENT OF STATE

[Public Notice 3946]

Culturally Significant Objects Imported for Exhibition Determinations: ''Greuze The Draftsman''

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Greuze The Draftsman,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Frick Collection, New York, NY from on or about May 14, 2002 to on or about August 4, 2002, and at the J. Paul Getty Museum from on or about September 10–December 1, 2002, and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 6, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 02–6150 Filed 3–13–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3944]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Quest for Immortality: Treasures of Ancient Egypt''

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition''The Quest for Immortality: Treasures of Ancient Egypt'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about April 21, 2002 to on or about August 11, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 6, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 02–6151 Filed 3–13–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3945]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Balkans Junior Faculty Development Program

SUMMARY: The Office of Academic Exchange Programs/European Programs Branch of the Bureau of Educational and Cultural Affairs announces an open competition for the new Balkans *Junior Faculty Development Program* (JFDP). Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501 (c) (3) may submit proposals to place visiting faculty from Bosnia and Herzegovina, Macedonia, Montenegro and Serbia at U.S. universities in a one academic year (nine months) teacher training and curriculum development program. The grantee organization for this new program will support and oversee the activities of the faculty throughout their stay in the United States, including their undertaking a practical internship at the end of the academic program (an additional two months). In addition, the

grantee organization will recruit and select candidates for the JFDP in Bosnia and Herzegovina, Macedonia, Montenegro and Serbia to begin the program in the United States in Fall 2003.

Program Information

Overview

The new Balkans Junior Faculty Development Program (JFDP) will offer fellowships to university instructors from Bosnia and Herzegovina, Macedonia, Montenegro and Serbia. Selected through an open, merit-based competition, JFDP Fellows will attend U.S. universities for one academic year to work with faculty mentors and to audit courses in order to develop new curricula and approaches to teaching in their fields of study. The JFDP will encourage its Fellows to develop professional relationships with the U.S. academic community, and to forge ties between their U.S. colleagues and colleagues in their home countries, and to share their experiences and knowledge with U.S. students and professors. Throughout their stay in the United States, JFDP Fellows will attend conferences and seminars, and participate in two-month practical internships after completing the academic component of the program. The goals of the program are to allow U.S. scholars and scholars from the participating countries to exchange ideas on curriculum design and teaching, and to increase collaboration and cooperation between universities in the United States and Bosnia and Herzegovina, Macedonia, Montenegro and Serbia. Participation in the JFDP under this grant is restricted to university instructors from Bosnia and Herzegovina, Macedonia, Montenegro and Serbia in the following fields of study: American studies, business administration, economics, education administration, environmental studies, history, international affairs, journalism, law, library science, political science, public administration and public policy.

Programs must comply with J–1 Visa regulations. Subject to the availability of funds, it is anticipated that this grant will begin on or about July 1, 2002. Please refer to the Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. The Bureau anticipates awarding one grant in the amount of $1,240,000 ($140,000 for Bosnia and Herzegovina; $550,000 for Macedonia; $150,000 for Montenegro; and $400,000 for Serbia) to support the program and administrative costs required to implement this program. The Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

(1) Overseas recruitment and selection of candidates

(2) Participant travel expenses, stipends, accident and sickness insurance, visa fees, professional development costs

(3) Orientations, participant conferences

(4) Host university fees

(5) Alumni and follow-on activities

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/E/EUR–02–07.*

FOR FURTHER INFORMATION, CONTACT: The Office of Academic Exchanges, ECA/A/E/EUR, Room 246, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, tel. (202) 205–0525, fax (202) 260–7985, *exchanges@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Sheila Casey on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, May 10, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/EUR–02–07, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs Sections at U.S. Embassies (or Public Affairs Office in Montenegro) for review, with the goal of reducing the time it takes to obtain Embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Deadlines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of

these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as by the Public Diplomacy Sections overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Development and Management:* The proposal should exhibit originality, substance, precision, innovation, and relevance to the Bureau's mission. Objectives should be reasonable, feasible and flexible. The proposal should clearly demonstrate how the grantee organization will meet the program's objectives. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. The agenda should adhere to the program overview and guidelines described above.

2. *Multiplier Effect/Impact:* The JFDP should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. The proposal should include creative ways to involve program participants in U.S. communities.

3. *Support of Diversity:* The proposal should demonstrate the grantee organization's commitment to promoting the awareness and understanding of diversity through participant recruitment efforts, and through its selection of host universities.

4. *Institution's Record/Ability:* The proposal should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau/USIA grants as determined by the Bureau's Grants Division. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals.

5. *Follow-on and Alumni Activities:* The proposal should provide a plan for continued follow-on activity that insures that Bureau-supported programs are not isolated events, but have meaning and scope beyond the time the actual exchange took place.

6. *Project Evaluation:* The proposal should include a plan to evaluate the success of the JFDP, both during and after the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique, plus a description of methodologies that can be used to link outcomes to original project objectives. The grantee organization will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

7. *Cost-effectiveness and Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided in part through the Support for East European Democracy (SEED) Act.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: March 5, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–6149 Filed 3–13–02; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Deadline for Notification of Intent To Use the Airport Improvement Program (AIP) Sponsor Entitlement, Cargo Funds, and Nonprimary Entitlement Funds for Fiscal Year 2002

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces May 1, 2002, as the deadline for each airport sponsor to notify the FAA that it will use its fiscal year 2002 entitlement funds to accomplish projects identified in the Airports Capital Improvement Plan that was formulated in the spring of 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Lou, Manager, Program Implementation Branch, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP–520, on (202) 267–8812.

SUPPLEMENTARY INFORMATION: Section 47105(f) of Title 49, United States Code, provides that the sponsor of each airport to which funds are apportioned shall notify the Secretary by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for the funds apportioned to it (entitlements). This notice applies only to those

airports that have received such entitlements, except those nonprimary airports located in designated Block Grant States. Notification of the sponsor's intent to apply during fiscal year 2002 for any of its available entitlement funds including those unused from prior years, shall be in the form of inclusion of projects for fiscal year 2002 in the Airports Capital Improvement Plan.

This notice is promulgated to expedite and prioritize grants in the final quarter of the fiscal year. Absent an acceptable application by May 1, 2002, FAA will defer an airport's entitlement funds until the next fiscal year. Pursuant to the authority and limitations in section 47117(f), FAA will issue discretionary grants in an aggregate amount not to exceed the aggregate amount of deferred entitlement funds. Airport sponsors may request unused entitlements after September 30, 2002.

Issued in Washington, DC on March 6, 2002.

Stan Lou,

Manager, Program Implementation Branch.

[FR Doc. 02–6133 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from April 16–19, 2002, from 8 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Federal Aviation Administration Headquarters Building, Bessie Coleman Conference Center, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. David W. Madison, Acting Executive Director, ATPAC, Air Traffic Planning and Procedures, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held April 16 through April 19, 2002, at the Federal Aviation Administration Headquarters Building, Bessie Coleman Conference Center, 800 Independence Avenue, SW., Washington, DC 20591.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above or not later than April 12, 2002. The next quarterly meeting of the FAA ATPAC is planned to be held from July 15–18, 2002, in Seattle, Washington.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on March 4, 2002.

David W. Madison,

Acting Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 02–6130 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Fayetteville Regional Airport, Fayetteville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Fayetteville Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 15, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bradley S. Whited, A.A.E., Airport Director, of the city of Fayetteville at the following address; Mr. Bradley Whited, A.A.E., Airport Manager, Fayetteville Regional Airport, P.O. Box 64218, Fayetteville, NC 28306.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Fayetteville under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Southern Region, Atlanta Airports District Office, Mrs. Tracie D. Kleine, Program Manager, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, (404) 305–7148.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Fayetteville Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 4, 2002, the FAA determined that the application to use the revenue from a PFC submitted by the city of Fayetteville was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 13, 2002.

The following is a brief overview of the application.

PFC Application No.: 02–02–U–00–FAY.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 2000.

Proposed charge expiration date: November 1, 2005.

Total estimated net PFC revenue: $1,026,513.

Brief description of proposed project(s): Construct North General

Aviation Ramp, Security System Upgrade, Phase II, Design and Construct Runway 04 Safety Area, Phase I, Acquire Land, Renovate Terminal Building, Phase II, Construct Runway 04 Safety Area, Phase II, Renovate Terminal Building, Phase III, Construct Runway 22 Safety Area, Construct non-license Vehicle Road, Construct Jet Bridge Modification, Construct Taxiway 'K'.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Fayetteville Regional Airport.

Issued in College Park, Georgia on March 6, 2002.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 02–6128 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–04–C–00–RDM To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Roberts Field, Submitted by the City of Redmond, Roberts Field, Redmond, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Roberts Field under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 15, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Carolyn S. Novick, Airport Manager, at the following address: City of Redmond, PO Box 726, Redmond, Oregon 97756.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Roberts Field, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington, 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 02–04–C–00–RDM to impose and use PFC revenue at Roberts Field, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 6, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Redmond, Roberts Field, Redmond, Oregon, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 24, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1, 2003.

Proposed charge expiration date: April 1, 2006.

Total requested for use approval: $1,968,545.

Brief description of proposed project: Expand Terminal Access Road; Design of Terminal Expansion; Install Perimeter Fence; Wildlife Mitigation; Design and Rehabilitate Air Carrier Terminal Apron; Rock Obstruction Removal.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFC's: Air Taxis which comprise less than one percent of the total enplanements at Roberts Field.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Roberts Field.

Issued in Renton, Washington on March 6, 2002.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–6132 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34179]

Bulkmatic Railroad Corporation—Operation Exemption—Bulkmatic Transport Company

Bulkmatic Railroad Corporation (BRC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 3.9 miles of railroad right-of-way and trackage at transloading and freighthouse facilities known as Bulkmatic Distribution Center, at Chicago Heights, IL (line).[1]

The transaction was scheduled to be consummated no earlier than March 6, 2002, the effective date of the exemption (7 days after the exemption was filed).[2]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] The Board exempted BRC's acquisition by sublease of the line from Bulkmatic Transport Company. *See Bulkmatic Railroad Corporation-Acquisition Exemption-Bulkmatic Transport Company,* STB Finance Docket No. 34145 (STB served Jan. 15, 2002). The Board also exempted the Chicago Heights Switching Company's (CHSC) operation of the line. *See Chicago Heights Switching Company-Operation Exemption-Bulkmatic Railroad Corporation,* STB Finance Docket No. 34146 (STB served Jan. 15, 2002). BRC states that the exemptions in STB Finance Docket Nos. 34145 and 34146 have not been consummated. BRC also states that the exemption in STB Finance Docket No. 34145 will go forward but that BRC will be the operator of the line in lieu of CHSC.

[2] On March 4, 2002, a petition to reject and/or to revoke the exemptions in STB Finance Docket Nos. 34145 and 34179 and for stay of the effective date of the exemption in STB Finance Docket No. 34179 was filed by Joseph C. Szabo, for and on behalf of the United Transportation United-Illinois Legislative Board (UTU–IL). By decision served on March 5, 2002, the petition for stay was denied. That decision also noted that UTU-IL had not supported its request for rejection of the notices and that the request to revoke the exemptions would be addressed in a subsequent decision. *See Bulkmatic Railroad Corporation-Acquisition and Operation Exemption-Bulkmatic Transport Company,* STB Finance Docket No. 34145 *et al.* (STB served Mar. 5, 2002). In the decision served on March 5, 2002, the title of STB Finance Docket No. 34145 was incorrect. The correct title of STB Finance Docket No. 34145 is shown in note 1 above.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34179, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David C. Dillon, Esq., Dillon & Nash, 111 West Washington Street, Suite 719, Chicago, IL 60602.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: March 7, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6023 Filed 3–13–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34174]

Grand Trunk Western Railroad Incorporated—Trackage Rights Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company

Pennsylvania Lines LLC (PRR), as owner, and Norfolk Southern Railway Company (NS), as operator, pursuant to a written trackage rights agreement entered into among Grand Trunk Western Railroad Incorporated, PRR and NS, have agreed to grant nonexclusive overhead trackage rights to GTW [1] between milepost UW–2.4 of the former Chicago Junction Railway Company to a point approximately 250 feet south of 43rd Street via Tracks #237 and #222, and between 43rd Street and a point approximately 100 feet south of 43rd Street, via Track #224, all in Chicago, IL, a total distance of approximately 0.7 miles.

The transaction was scheduled to be consummated on or after March 7, 2002, the effective date of the exemption.

The purpose of the trackage rights is to allow GTW to connect with Track #224.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S. C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34174, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Michael J. Barron, Jr., 455 North Cityfront Plaza Drive, Chicago, IL 60611–5317.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

Decided: March 7, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6022 Filed 3–13–02; 8:45 am]

BILLING CODE 4915–00–P

[1] GTW is a wholly owned subsidiary of Canadian National Railway Company.

DEPARTMENT OF VETERANS AFFAIRS (VA)

President's Task Force To Improve Health Care Delivery for Our Nation's Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans scheduled to take place on Wednesday, March 13, 2002, beginning at 8:00 a.m. until 5:30 p.m. The meeting will be held in the Horizon Ballroom, the Ronald Reagan Building International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC, and is open to the public.

The purpose of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is to:

(a) Identify ways to improve benefits and services for Department of Veterans Affairs (VA) beneficiaries and for Department of Defense (DoD) military retirees who are also eligible from VA, through better coordination of the activities of the two departments;

(b) Review barriers and challenges that impede VA and DoD coordination, including budgeting processes, timely billing, cost accounting, information technology, and reimbursement. Identify opportunities to improve such business practices to ensure high quality and cost effective health care; and

(c) Identify opportunities for improved resource utilization through partnership between VA and DoD to maximize the use of resources and infrastructure, including: buildings, information technology and data sharing systems, procurement of supplies, equipment and services, and delivery of care.

During this meeting, the Task Force work groups will continue to obtain current and updated information and to validate and/or clarify that information. The work groups will make presentations on the various topics to the members.

Interested parties can provide written comments to Mr. Dan Amon, Communications Director, President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, 1401 Wilson Boulevard, 4th Floor, Arlington, Virginia, 22209.

Dated: March 5, 2002.

By direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–6104 Filed 3–13–02; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 67, No. 50

Thursday, March 14, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 411, 413, 424, and 489

[CMS–1163–F]

RIN 0938–AK47

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities-Update; Final Rule

Correction

In rule document 01–18869 beginning on page 39562 in the issue of Tuesday, July 31, 2001, make the following correction:

On page 39582, the table heading ''TABLE 10.A–1992 AND 1997 SKILLED NURSING FACILITY MAJOR COST CATEGORIES AND WEIGHTS FROM MEDICATE COST REPORTS'', should read ''TABLE 10.A–1992 AND 1997 SKILLED NURSING FACILITY MAJOR COST CATEGORIES AND WEIGHTS FROM MEDICARE COST REPORTS''.

[FR Doc. C1–18869 Filed 3–13–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 28, 109, 122, 131, 169, 185, and 199

[USCG–2001–11118]

RIN 2115–AG28

Liferaft Servicing Intervals

Correction

In proposed rule document 02–5211 beginning on page 9939 in the issue of Tuesday, March 5, 2002, make the following corrections:

1. On page 9941, in the table, under the heading, ''Current first servicing (in months), in the fourth line, '' 12 months'' should read, ''12''.

2. On the same page, in the same table, under the same heading, in the eighth line, ''12 months'' should read, ''12''.

3. On the same page, in the same table, under the heading, ''Proposed first servicing (in months), in the first line, add the number ''24''.

[FR Doc. C2–5211 Filed 3–13–02; 8:45 am]

BILLING CODE 1505–01–D

Corrections

Federal Register

Vol. 67, No. 50

Thursday, March 14, 2002

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 411, 413, 424, and 489

[CMS–1163–F]

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[FR Doc. C1–18869 Filed 3–13–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 28, 109, 122, 131, 169, 185, and 199

[USCG–2001–11118]

RIN 2115–AG28

Liferaft Servicing Intervals

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[FR Doc. C2–5211 Filed 3–13–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
March 14, 2002

Part II

The President

Notice of March 13, 2002—Continuation of the National Emergency with Respect to Iran

Federal Register
Vol. 67, No. 50
Thursday, March 14, 2002

Presidential Documents

Title 3—

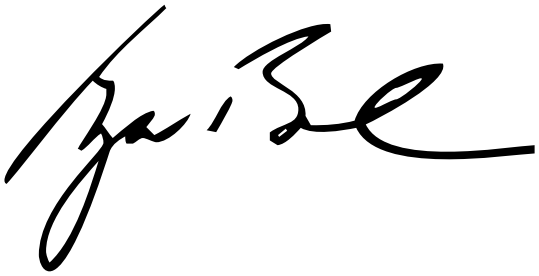
The President

Notice of March 13, 2002

Continuation of the National Emergency with Respect to Iran

On March 15, 1995, by Executive Order 12957, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Government of Iran, including its support for international terrorism, efforts to undermine the Middle East peace process, and acquisition of weapons of mass destruction and the means to deliver them. On May 6, 1995, the President issued Executive Order 12959 imposing more comprehensive sanctions to further respond to this threat, and on August 19, 1997, the President issued Executive Order 13059 consolidating and clarifying the previous orders.

Because the actions and policies of the Government of Iran continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on March 15, 1995, must continue in effect beyond March 15, 2002. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iran. Because the emergency declared by Executive Order 12957 constitutes an emergency separate from that declared on November 14, 1979, by Executive Order 12170, this renewal is distinct from the emergency renewal of November 2001. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
March 13, 2002.

[FR Doc. 02–6376
Filed 03–13–02; 11:46 am]
Billing code 3195–01–P

Federal Register

Thursday,
March 14, 2002

Part II

The President

Notice of March 13, 2002—Continuation of the National Emergency with Respect to Iran

Federal Register
Vol. 67, No. 50
Thursday, March 14, 2002

Presidential Documents

Title 3—

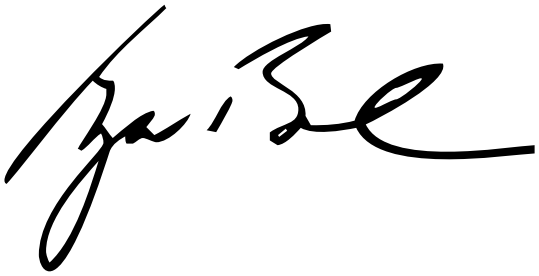
The President

Notice of March 13, 2002

Continuation of the National Emergency with Respect to Iran

On March 15, 1995, by Executive Order 12957, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Government of Iran, including its support for international terrorism, efforts to undermine the Middle East peace process, and acquisition of weapons of mass destruction and the means to deliver them. On May 6, 1995, the President issued Executive Order 12959 imposing more comprehensive sanctions to further respond to this threat, and on August 19, 1997, the President issued Executive Order 13059 consolidating and clarifying the previous orders.

Because the actions and policies of the Government of Iran continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on March 15, 1995, must continue in effect beyond March 15, 2002. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iran. Because the emergency declared by Executive Order 12957 constitutes an emergency separate from that declared on November 14, 1979, by Executive Order 12170, this renewal is distinct from the emergency renewal of November 2001. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
March 13, 2002.

[FR Doc. 02–6376
Filed 03–13–02; 11:46 am]
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