AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Federal Register

4–29–02 Monday
Vol. 67 No. 82 April 29, 2002
Pages 20881–21158

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

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Adjustment of Appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2002 Tariff-Rate Quota Year

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document sets forth the revised appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2002 quota year reflecting the cumulative annual transfers from Appendix 1 to Appendix 2 for certain dairy product import licenses permanently surrendered by licensees or revoked by the Licensing Authority.

EFFECTIVE DATE: April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Michael I. Hankin, Dairy Import Quota Manager, Import Policies and Programs Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1021 or telephone at (202) 720–9439.

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service, under a delegation of authority from the Secretary of Agriculture, administers the Dairy Tariff-Rate Import Quota Licensing Regulation codified at 7 CFR 6.20–6.37 that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, issues these licenses and, in conjunction with the U.S. Customs Service, monitors their use.

The regulation at 7 CFR 6.34(a) states: ''Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered, or is revoked by the Licensing Authority, the amount of such license will be transferred to Appendix 2.'' Section 6.34(b) provides that the cumulative annual transfers will be published in the **Federal Register**. Accordingly, this document sets forth the revised Appendices for the 2002 tariff-rate quota year.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy Products, Imports, Reporting and record keeping requirements.

Issued at Washington, DC.

Michael I. Hankin,

Licensing Authority.

Accordingly, 7 CFR Part 6 is amended as follows:

PART 6—IMPORT QUOTAS AND FEES

1. The authority citation for Part 6, Subpart—Dairy Tariff-Rate Import Quota Licensing continues to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

2. Appendices 1, 2 and 3 to Subpart—Dairy Tariff-Rate Import Quota Licensing are revised to read as follows:

APPENDICES 1, 2 AND 3 TO SUBPART—DAIRY TARIFF-RATE IMPORT QUOTA LICENSING

[Articles Subject to: Appendix 1, Historical Licenses; Appendix 2, Nonhistorical Licenses; and Appendix 3, Designated Importer Licenses for Quota Year 2002 (quantities in kilograms)]

Article by additional U.S. note number and country of origin	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
NON-CHEESE ARTICLES				
BUTTER (NOTE 6)	5,591,819	1,385,181	.....	.....
EU–15	80,694	15,467	.....	.....
New Zealand	124,709	25,884	.....	.....
Other Countries	63,105	10,830	.....	.....
Any Country	5,323,311	1,333,000	.....	.....
DRIED SKIM MILK (NOTE 7)	600,076	4,660,924	.....	.....
Australia	600,076	.....	.....	.....
Canada	.....	219,565	.....	.....
Any Country	.....	4,441,359	.....	.....
DRIED WHOLE MILK (NOTE 8)	3,175	3,318,125	.....	.....
New Zealand	3,175	.....	.....	.....
Any Country	.....	3,318,125	.....	.....
DRIED BUTTERMILK/WHEY (NOTE 12)	224,981	.....	.....	.....

APPENDICES 1, 2 AND 3 TO SUBPART—DAIRY TARIFF-RATE IMPORT QUOTA LICENSING—Continued

[Articles Subject to: Appendix 1, Historical Licenses; Appendix 2, Nonhistorical Licenses; and Appendix 3, Designated Importer Licenses for Quota Year 2002 (quantities in kilograms)]

Article by additional U.S. note number and country of origin	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
Canada	161,161	.....	.....	.....
New Zealand	63,820	.....	.....	.....
BUTTER SUBSTITUTES CONTAINING OVER 45 PERCENT OF BUTTERFAT AND/OR BUTTER OIL (NOTE 14)	.....	6,080,500	.....	.....
Any Country	.....	6,080,500	.....	.....
TOTAL: NON-CHEESE ARTICLES	6,420,051	15,444,730	.....	.....
CHEESE ARTICLES				
CHEESE AND SUBSTITUTES FOR CHEESE (EXCEPT: SOFT RIPENED COW'S MILK CHEESE; CHEESE NOT CONTAINING COW'S MILK; CHEESE (EXCEPT COTTAGE CHEESE) CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT; AND, ARTICLES WITHIN THE SCOPE OF OTHER IMPORT QUOTAS PROVIDED FOR IN THIS SUBCHAPTER) (NOTE 16)	23,759,623	7,711,108	9,661,128	7,496,000
Argentina	7,690	.....	92,310	.....
Australia	535,628	5,542	758,830	1,750,000
Canada	1,031,946	109,054	.....	.....
Costa Rica	.....	.....	.....	1,550,000
Czech Republic	.....	.....	.....	200,000
EU–15	15,578,947	6,753,485	1,132,568	2,346,000
Of which Portugal is	127,536	1,773	223,691	.....
Israel	79,696	.....	593,304	.....
Iceland	294,000	.....	29,000	.....
New Zealand	4,479,868	335,604	6,506,528	.....
Norway	124,982	25,018	.....	.....
Poland	917,497	18,727	.....	300,000
Slovak Republic	.....	.....	.....	600,000
Switzerland	597,513	73,899	548,588	500,000
Uruguay	.....	.....	.....	250,000
Other Countries	111,856	89,779	.....	.....
Any Country	.....	300,000	.....	.....
BLUE-MOLD CHEESE (EXCEPT STILTON PRODUCED IN THE UNITED KINGDOM) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, BLUE-MOLD CHEESE (NOTE 17)	2,321,554	159,447	.....	430,000
Argentina	2,000	.....	.....	.....
EU–15	2,319,553	159,447	.....	300,000
Chile	.....	.....	.....	80,000
Czech Republic	.....	.....	.....	50,000
Other Countries	1	.....	.....	.....
CHEDDAR CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, CHEDDAR CHEESE (NOTE 18)	3,664,363	619,493	519,033	7,620,000
Australia	937,721	46,778	215,501	1,250,000
Chile	.....	.....	.....	220,000
Czech Republic	.....	.....	.....	50,000
EU–15	57,168	205,832	.....	1,000,000
New Zealand	2,543,600	252,868	303,532	5,100,000
Other Countries	125,874	14,015	.....	.....
Any Country	.....	100,000	.....	.....
AMERICAN-TYPE CHEESE, INCLUDING COLBY, WASHED CURD AND GRANULAR CHEESE (BUT NOT INCLUDING CHEDDAR) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING OR PROCESSED FROM SUCH AMERICAN-TYPE CHEESE (NOTE 19)	2,856,128	309,425	357,003	.....
Australia	834,747	46,251	119,002	.....
EU–15	186,222	167,778	.....	.....
New Zealand	1,671,294	90,705	238,001	.....
Other Countries	163,865	4,691	.....	.....
EDAM AND GOUDA CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, EDAM AND GOUDA CHEESE (NOTE 20)	5,294,715	311,687	.....	1,210,000
Argentina	119,003	5,997	.....	110,000
Czech Republic	.....	.....	.....	100,000
EU–15	5,035,993	253,007	.....	1,000,000
Norway	114,318	52,682	.....	.....
Other Countries	25,401	1	.....	.....

APPENDICES 1, 2 AND 3 TO SUBPART—DAIRY TARIFF-RATE IMPORT QUOTA LICENSING—Continued

[Articles Subject to: Appendix 1, Historical Licenses; Appendix 2, Nonhistorical Licenses; and Appendix 3, Designated Importer Licenses for Quota Year 2002 (quantities in kilograms)]

Article by additional U.S. note number and country of origin	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
ITALIAN-TYPE CHEESES, MADE FROM COW'S MILK, (ROMANO MADE FROM COW'S MILK, REGGIANO, PARMESAN, PROVOLONE, PROVOLETTI, SBRINZ, AND GOYA-NOT IN ORIGINAL LOAVES) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH ITALIAN-TYPE CHEESES, WHETHER OR NOT IN ORIGINAL LOAVES (NOTE 21)	6,524,558	995,989	795,517	5,165,000
Argentina	3,958,383	167,100	367,517	1,890,000
EU–15	2,555,775	826,225	.....	700,000
Poland	.....	.....	.....	1,325,000
Romania	.....	.....	.....	500,000
Uruguay	.....	.....	428,000	750,000
Other Countries	10,400	2,664	.....	.....
SWISS OR EMMENTHALER CHEESE OTHER THAN WITH EYE FORMATION, GRUYERE-PROCESS CHEESE AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH CHEESES (NOTE 22)	5,753,362	897,952	823,519	380,000
EU–15	4,344,660	807,334	393,006	380,000
Switzerland	1,333,942	85,545	430,513	.....
Other Countries	74,760	5,073	.....	.....
CHEESE AND SUBSTITUTES FOR CHEESE, CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT (EXCEPT ARTICLES WITHIN THE SCOPE OF OTHER TARIFF-RATE QUOTAS PROVIDED FOR IN THIS SUBCHAPTER), AND MARGARINE CHEESE (NOTE 23)	3,838,969	585,939	1,050,000	.....
EU–15	3,675,725	574,275	.....	.....
Israel	.....	.....	50,000	.....
New Zealand	.....	.....	1,000,000	.....
Poland	163,243	11,664	.....	.....
Other Countries	1	.....	.....	.....
SWISS OR EMMENTHALER CHEESE WITH EYE FORMATION (NOTE 25)	18,247,171	4,050,160	9,557,945	2,620,000
Argentina	.....	9,115	70,885	.....
Australia	209,698	.....	290,302	.....
Canada	.....	.....	70,000	.....
Czech Republic	.....	.....	.....	400,000
Hungary	.....	.....	.....	800,000
EU–15	13,254,454	3,222,374	4,003,172	1,220,000
Iceland	149,999	.....	150,001	.....
Israel	27,000	.....	.....	.....
Norway	3,206,405	448,905	3,227,690	.....
Switzerland	1,314,340	369,765	1,745,895	200,000
Other Countries	85,275	1	.....	.....
TOTAL: CHEESE ARTICLES	72,260,443	15,641,200	22,764,145	24,921,000

[FR Doc. 02–10461 Filed 4–26–02; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–026–2]

Change in Disease Status of Portugal Because of African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to remove Portugal from the list of regions where African swine fever exists. We are taking this action because Portugal is now free of African swine fever. This action relieves restrictions due to African swine fever on the importation of pork and pork products into the United States from Portugal. However, because Portugal is on the list of regions where hog cholera exists and the list of regions that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or foot-and-mouth disease-affected countries, Portugal continues to be subject to certain restrictions regarding the importation into the United States of pork and pork products.

EFFECTIVE DATE: May 14, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever (ASF), hog cholera, and swine vesicular disease. These are dangerous and

destructive communicable diseases of ruminants and swine. Section 94.8 of the regulations lists regions of the world where ASF exists or is reasonably believed to exist. Section 94.8 also restricts the importation of pork and pork products into the United States from the listed regions.

On December 10, 2001, we published in the **Federal Register** (66 FR 63633–63634, Docket No. 01–026–1) a proposal to amend the regulations by removing Portugal from the list in § 94.8 of regions where ASF exists.

We solicited comments concerning our proposal for 60 days ending February 8, 2002.

We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule removes certain restrictions on the importation of pork or pork products into the United States from Portugal. We have determined that approximately 2 weeks are needed to ensure that Animal Plant Health Inspection Service personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required under Executive Order 12866.

We are amending the regulations to remove Portugal from the list of regions where ASF exists. We are taking this action because Portugal is now free of ASF. This action relieves restrictions due to ASF on the importation of pork and pork products into the United States from Portugal. However, because Portugal is on the list of regions where hog cholera exists and the list of regions that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected countries, Portugal continues to be subject to certain restrictions regarding the importation into the United States of pork and pork products.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

Entities in the United States likely to be affected by this rule include those engaged in the production of swine and processed pork products. Since Portugal has never exported pork or pork products to the United States, we anticipate that this rule will have no economic effect on U.S. swine importers, hog meat processors, hog producers, or any other entities, large or small. However, should Portugal commence the exportation of pork and pork products to the United States, restrictions on the importation of pork and pork products into the United States from Portugal will still be in place because Portugal is on the list of regions where hog cholera exists and the list of regions that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected countries. Given those continuing restrictions, we believe any potential imports of processed pork and pork products from Portugal would be minimal. Likewise, because any potential increase in imports of processed pork and pork products from Portugal would be slight, the potential effect on U.S. swine producers and processors of pork is expected to be minimal.

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.8 [Amended]

2. In § 94.8, the introductory text of the section is amended by removing the word ''Portugal,''.

Done in Washington, DC, this 24th day of April 2002 .

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–10460 Filed 4–26–02; 8:45 am]

BILLING CODE 3410–34–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AG04

Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, NV; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to a conforming amendment included with the final regulations establishing licensing criteria for the disposal of spent nuclear fuel and high-level radioactive wastes in the proposed geologic repository at Yucca Mountain, Nevada, which the Nuclear Regulatory Commission published in the **Federal Register** of November 2, 2001 (66 FR 55732).

EFFECTIVE DATE: December 3, 2001.

FOR FURTHER INFORMATION CONTACT: Timothy McCartin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6681; e-mail *tjm3@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction became

effective on December 3, 2001. The final rule, published November 2, 2001 (66 FR 55732), added Part 63, Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada, to the NRC's regulations, and made conforming amendments to other parts of 10 CFR Chapter 1. One of the conforming amendments included in the final rule was intended to amend § 2.714(d) to include a cross-reference to the new part 63. However, as a result of that amendment, paragraphs (d)(1) and (d)(2) were inadvertently removed from the NRC's regulations at § 2.714(d). The NRC did not intend to remove these paragraphs.

Need for Correction

As published, the final regulations erroneously omit two paragraphs of § 2.714(d) which address the consideration by a ruling body of a petition to intervene in, or a request for a hearing on, a licensing proceeding. This correction restores those paragraphs to 10 CFR part 2, Subpart G.

List of Subjects in 10 CFR Part 2

Administrative procedure and practice, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

Accordingly, 10 CFR part 2 is corrected by making the following correcting amendments:

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

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

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note).

Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.714, revise paragraph (d) to read as follows:

§ 2.714 Intervention.

* * * * *

(d) The Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on petitions to intervene and/or requests for hearing shall permit intervention, in any hearing on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, by the State in which such area is located and by any affected Indian Tribe as defined in part 60 or 63 of this chapter. In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for a hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

* * * * *

Dated at Rockville, Maryland, this 23rd day of April, 2002.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Federal Register Liaison Officer.

[FR Doc. 02–10458 Filed 4–26–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE182, Special Condition 23–116–SC]

Special Conditions; Raytheon (Beechcraft) V35, V35A (to S/N 8872), S35, 35–C33A, E33A, and E33C (up to S/N CE–249 and CJ–14), Protection for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to S–TEC Corporation, One S–TEC Way Municipal Airport, Mineral Wells, TX 76007, for a Supplemental Type Certificate for the Raytheon (Beechcraft) Models V35, V35A (to S/N 8872), S35, 35–C33A, E33A, E33C (up to S/N CE–249 and CJ–14) airplane. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. This novel and unusual design features include the installation of electronic flight instrument systems (EFIS) ''Magic'' display manufactured by Meggitt Avionics for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is April 15, 2002. Comments must be received on or before May 29, 2002.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel,

ACE–7, Attention: Rules Docket Clerk, Docket No. CE182, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE182. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 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: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE182.'' The postcard will be date stamped and returned to the commenter.

Background

On November 13, 2001, S–TEC Corporation, One S–TEC Way, Mineral Wells Airport, Mineral Wells, Texas 76067, made an application to the FAA for a new Supplemental Type Certificate for the Raytheon (Beechcraft) Models V35, V35A (to S/N 8872), S35, 35–C33A, E33A, and E33C (up to S/N CE–249 and CJ–14) airplane. The airplane is currently approved under Type Certificate No. 3A15. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS, that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, S–TEC Corporation must show that the Raytheon (Beechcraft) Models V35, V35A (to S/N 8872), S35, 35–C33A, E33A, and E33C (up to S/N CE–249 and CJ–14) airplane meets the following provisions, or the applicable regulations in effect on the date of application for the change to the Raytheon (Beechcraft) Models V35, V35A (to S/N 8872), S35, 35–C33A, E33A, E33C (up to S/N CE–249 and CJ–14): CAR 3 May 15, 1957, through Amendment 3–8, FAR 23.1309, 23.1311, 23.1321 as amended by Amendment 49, and the special conditions adopted by this rulemaking action.

Discussion

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

Special conditions are normally issued in accordance with § 11.38 and become a part of the type certification basis in accordance with § 21.101.

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

Novel or Unusual Design Features

S–TEC Corporation plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

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

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

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(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 HIRF environment defined below:

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

The field strengths are expressed in terms of peak root-mean-square (rms) values.

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 field strength, from 10 kHz to 19 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

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

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

Applicability

As discussed above, these special conditions are applicable to the Raytheon (Beechcraft) Models V35A (to S/N 8872), S35, 35–C33A, E33A, E33C (up to S/N CE–249 and CJ–14) airplane. Should S–TEC Corporation apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

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

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

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, §§ 21.16 and 21.101; and 14 CFR part 11, § 11.38.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Raytheon (Beechcraft) Models V35, V35A (to S/N 8872), S35, 35–C33A, E33A, E33C (up to S/N CE–249 and CJ–14) airplane modified by S–TEC Corporation to add an EFIS.

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF). Each System that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on April 15, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–9942 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM216; Special Conditions No. 25–199–SC]

Special Conditions: Cessna Model 501 and 551 Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Cessna Aircraft Company Cessna Model 501 and 551 series airplanes modified by ElectroSonics. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual air data display unit systems that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is April 17, 2002. Comments must be received on or before May 29, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM216, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: *Docket No. NM216.* 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: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification and thus delivery of the affected airplanes. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On March 20, 2002, ElectroSonics, 4391 International Gateway, Columbus, Ohio, applied for a Supplemental Type Certificate (STC) to modify Cessna Model 501 and 551 series airplanes. The Cessna Model 501 and 551 series airplanes are normal category turbine powered airplanes. The Cessna Model 501 series airplanes are powered by two Pratt & Whitney JT15D–1(A/B) turbofan engines and have a maximum takeoff weight of 11,850 pounds. These airplanes operate with either a 1-pilot or 2-pilot crew and can hold up to 8 passengers. The Cessna Model 551 series airplanes are powered by two Pratt & Whitney JT15D–4 turbofan engines and have a maximum takeoff weight of 12,500 pounds. These airplanes operate with either a 1-pilot or 2-pilot crew and can hold up to 10 passengers. The modification incorporates the installation of Innovative Solutions & Support Air Data Display Units (ADDU). The ADDU is a replacement for the existing analog flight instrumentation, while also providing additional functional capability and redundancy in the system. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, ElectroSonics must show that the Cessna Model 501 and 551 series airplanes, as modified to include the new air data display units, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A27CE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations included in the certification basis for the Cessna 501 airplanes include part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by Amendments 23–1 through 23–16, with certain exceptions, and section 23.1385 as amended through Amendment 23–20; part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–37, with certain exceptions; part 36, effective December 1, 1969, as amended by Amendments 36–1 through 36–5; SFAR 27, Fuel Venting (replaced by part 34, effective September 10, 1990); plus additional requirements listed in the type certificate data sheet that are not relevant to these special conditions.

The regulations included in the certification basis for the Cessna Model 551 series airplanes include part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by Amendments 23–1 through 23–16, with certain exceptions, sections 23.1143(e) and 23.1385(c) as amended through Amendments 23–18, and sections 23.1301 and 23.1335 as amended by Amendments through 23–20; part 25 effective February 1, 1965, as amended by Amendments 25–1 through 25–37 with certain exceptions, and sections 25.901(c), 25.903(e)(3), and 25.1351(d) as amended through Amendments 25–41; part 36, effective December 1, 1969, as amended by Amendments 36–1 through 36–6; SFAR 27, as amended by Amendments 27–1 through 27–3, Fuel Venting (replaced by part 34, effective September 10, 1990). For the Bendix EFS–10, Sperry EDZ–600, Sperry EDZ–601, and Sperry EDZ–603 electronic flight instrument systems only, compliance has been shown with the following regulations: sections 25.1301, 25.1303(b), and 25.1322 as amended through Amendment 25–38; sections 25.1309, 25.1321(a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335 as amended through Amendments 25–41; plus additional requirements listed in the type certificate data sheet that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (that is, 14 CRF part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna Model 501 and 551 series airplanes modified by ElectroSonics because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Note: Although 14 CFR part 25 is referenced in these special conditions, the Cessna Model 501 and 551 series airplanes are certified under both part 25 and part 23. The applicable airworthiness regulations under part 23, as they relate to HIRF, are the same as those under part 25.

In addition to the applicable airworthiness regulations and special conditions, these Cessna Model 501 and 551 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the

noise certification requirements of part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

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

Novel or Unusual Design Features

As noted earlier, the Cessna Model 501and 551 series airplanes modified by ElectroSonics will incorporate dual air data display unit systems that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards of (14 CFR part 25) do not contain adequate or appropriate safety standards that address protecting this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Cessna Model 501 and 551 series airplanes modified by ElectroSonics to include the dual air data display unit systems. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table below are to be demonstrated.

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 of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Cessna Model 501 and 551 series airplanes modified by ElectroSonics to include Innovative Solutions & Support Air Data Display Units. Should ElectroSonics apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of 14 CFR 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Cessna Model 501 and 551 series airplanes modified by ElectroSonics. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Cessna Aircraft Company Cessna Model 501 and 551 series airplanes modified by ElectroSonics.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on April 17, 2002.

Lirio Liu-Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 02–9943 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–39–AD; Amendment 39–12668; AD 2002–04–11]

RIN 2120–AA64

Airworthiness Directives; General Electric Company GE90 Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2002–04–11 applicable to General Electric Company GE90 series turbofan engines that was published in the **Federal Register** on March 4, 2002 (67 FR 9582). The Table in the regulatory text section is incorrect. This document corrects that Table. In all other respects, the original document remains the same.

EFFECTIVE DATE: April 8, 2002.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive (FR Doc. 02–5003) applicable to General Electric Company GE90 series turbofan engines, was published in the **Federal Register** on March 4, 2002 (67 FR 9582). The following corrections are needed:

§ 39.13 [Corrected]

1. On page 9583, in the third column entitled, Inspect per engine manual chapter, in the third entry, (HPCR, Disk, Stage 7) ''72–31–07–200–001–001 Fluorescent Penetrant Inspection (subtask 72–31–07–230–051), and 72–31–07–200–001–001 Eddy Current Inspection (subtask 72–31–07–250–051 or 72–31–07–230–052 or 72–31–07–230–053'' is corrected to read ''72–31–07–200–001–001 Fluorescent Penetrant Inspection (subtask 72–31–07–230–051), and 72–31–07–200–001–001 Eddy Current Inspection of the Rim Boltholes (subtask 72–31–07–250–051 or 72–31–07–250–052 or 72–31–07–250–053''.

2. On the same page, in the same column entitled, Inspect per engine manual chapter, in the nineth entry, (HPTR Disk, Stage 1) ''72–53–02–200–001–002 Fluorescent Penetrant Inspection (subtask 72–53–02–160–051), and 72–53–02–200–001–002 Eddy Current Inspection of the Bore '' is corrected to read ''72–53–02–200–001–002 Fluorescent Penetrant Inspection (subtask 72–53–02–230–052), and 72–53–02–200–001–002 Eddy Current Inspection of the Bore''.

Issued in Burlington, MA, on April 18, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–10273 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regs. No. 4 and 16]

RIN 0960–AF20

Administrative Procedure for Imposing Penalties for False or Misleading Statements

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: The interim final rules published at 65 FR 42283 on July 10, 2000, are adopted as final without change. These rules reflect and implement section 207 of the Foster Care Independence Act of 1999. This provision amended the Social Security Act (the Act) by adding a new section 1129A which provides for the imposition by SSA of a penalty on any person who knowingly (knew or should have known or acted with knowing disregard for the truth) makes a statement that is false or misleading or omits a material fact for use in determining any right to or the amount of monthly benefits under titles II or XVI of the Act. The penalty is nonpayment for a specified number of months of benefits under title II that would otherwise be payable to the person and ineligibility for cash benefits under title XVI (including State supplementary payments made by SSA according to § 416.2005).

EFFECTIVE DATE: These regulations were effective July 10, 2000, the date they were published in the **Federal Register** as interim final rules (65 FR 42283).

FOR FURTHER INFORMATION CONTACT: Bill Hilton, Social Insurance Specialist, Office of Program Benefits, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–2468 or TTY (410) 966–5609. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION:

Background

Section 207 of the Foster Care Independence Act of 1999 (Pub. L. 106–169) amended title XI of the Act by adding section 1129A to help prevent and respond to fraud and abuse in SSA's programs and operations. Section 1129A provides for the imposition by SSA of a penalty on an individual who makes, or causes to be made, a statement or representation of a material fact that the person knows or should know is false or misleading or omits a material fact, or that the person makes with a knowing disregard for the truth. The statement must be made for use in determining eligibility for or the amount of benefits under title II or XVI. The penalty is nonpayment for 6, 12 or 24 months of benefits under title II that would otherwise be payable to the person and ineligibility for the same period of time for cash benefits under title XVI (including State supplementary payments made by SSA according to § 416.2005).

Section 207 of Pub. L. 106–169 directs the Commissioner of Social Security to develop rules prescribing the administrative process for making determinations under section 1129A, including when periods of penalty shall commence, and providing guidance on the exercise of discretion as to whether the penalty should be imposed in particular cases. Consequently, we published interim final rules on July 10, 2000, which added new rules at §§ 404.459 and 416.1340 to reflect and implement section 1129A. We provided a 60-day period for interested individuals and organizations to comment. Summaries of the comments we received and our responses thereto are set out later in this preamble. After consideration of all the comments received, we have decided not to revise

the interim final rules we published on July 10, 2000.

Section 1129A of the Act applies to statements and representations made on or after December 14, 1999, the date of enactment of the Foster Care Independence Act of 1999.

Explanation of Changes

In our interim final rules, we added new §§ 404.459 and 416.1340 to our regulations. The organization and wording of these two sections are essentially identical. These sections make it clear, and as Congress provided, that if an individual knowingly (knew or should have known or acted with knowing disregard for the truth) made a false or misleading statement with respect to one program, the penalty shall apply to benefits under both the title II and XVI programs. Applying the penalty to both programs helps protect the integrity of both programs from further fraud by the same person and helps to maintain public confidence in the integrity of our programs. A subsection-by-subsection discussion of these rules follows.

Subsection (a) describes the conditions under which you will be subject to a penalty by SSA for knowingly making a false or misleading statement of a material fact.

Subsection (b) explains that the penalty is both nonpayment of benefits under title II and ineligibility for cash benefits under title XVI. When we impose a penalty on you, you cannot receive benefits under either title II or title XVI even if the false or misleading statement was made in connection with benefits under only one of the two programs. We further explain that, as provided by the law, if we impose a penalty on your title XVI benefits, you also will not be eligible to receive State supplementary payments that SSA pays by agreement with the State.

Subsection (c) explains how long the penalty for making a false or misleading statement will last. As provided in section 1129A, the penalty will last six consecutive months the first time we penalize you, twelve consecutive months the second time we penalize you, and twenty-four consecutive months the third or subsequent times we penalize you. The penalty will not begin to run until you would otherwise be eligible for payment of benefits under either title II or title XVI. You will be ineligible to receive benefits at any time during the penalty period. If more than one penalty period has been imposed but they have not yet run, the penalties will run consecutively, not concurrently.

Subsection (d) explains, as provided in section 1129A, that the imposition of a penalty will affect only your own eligibility for benefits under titles II and XVI. If we impose a penalty on you, the penalty will not affect the eligibility or amount of benefits payable under titles II or XVI to another person. For example, another person (such as your spouse or child) may be entitled to benefits under title II based on your earnings record. Benefits would still be payable to that person to the extent that you would be receiving such benefits if the penalty had not been imposed. As another example, if you are receiving title II benefits that are limited under the family maximum provision (§ 404.403) and we stop your benefits because we impose a penalty on you, we will not increase the benefits of other family members who are limited by the family maximum provision simply because you are not receiving benefits as a result of the penalty. As a third example, if you and your spouse are receiving title XVI benefits, those benefit payments to your spouse based on the benefit rate for a couple will not be affected because of the penalty. Your spouse will continue to receive one half of the couple rate.

Section 1129A also specifically provides that the imposition of a penalty will not affect your eligibility for Medicare and Medicaid benefits (titles XVIII and XIX of the Act).

Subsection (e) explains that to impose a penalty on you, we must find that you knowingly made a false or misleading statement or omitted a material fact. ''Knowingly'' means that you knew or should have known that the statement was false or misleading or omitted a material fact, or you made the statement with a knowing disregard for the truth. We will base our decision to impose a penalty on the evidence and the reasonable inferences that can be drawn from that evidence, not on mere speculation or suspicion. In determining whether you knowingly made a false or misleading statement or omitted a material fact, we will consider all of the evidence in the record, including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time. In determining whether you acted knowingly, we will also consider the significance of the statement in terms of its likely impact on your benefits under titles II and/or XVI.

The Office of the Inspector General may investigate your false or misleading statement for fraud for civil monetary penalty purposes (see section 1129 of the Act) and you may be prosecuted civilly or criminally by the United States Attorney's Office. We may impose a penalty under these rules in addition to any other penalties that may be prescribed by law.

Subsection (f) explains that if you disagree with our initial determination to impose a penalty, you have the right to request reconsideration of the penalty decision, as discussed in §§ 404.907 and 416.1407. If you do request reconsideration, you will be able to present your case in one of three ways:

1. Case review—We will give you an opportunity to review the evidence in our files and then to present oral and written evidence to us;

2. Informal conference—In addition to following the procedures of a case review, we will give you an opportunity to present witnesses; and

3. Formal conference—In addition to following the procedures of an informal conference, we will give you an opportunity to request us to subpoena adverse witnesses and relevant documents and to cross-examine adverse witnesses.

After reconsideration, if you do not agree with our reconsidered determination you may follow the normal administrative and judicial review process by requesting a hearing before an administrative law judge, Appeals Council review and Federal court review, as described in §§ 404.900 and 416.1400.

Subsection (g) explains when the penalty period begins and ends. That section explains that the penalty period will not begin until the month you would otherwise be eligible to receive payments under either title II or title XVI. In addition, the point at which the penalty period begins may depend on whether you request reconsideration of our initial determination to penalize you. If you do not request reconsideration, the penalty period will begin no earlier than the first day of the second month following the month in which the time limit for requesting reconsideration ends. If you request reconsideration and our reconsidered determination does not change our original decision to penalize you, the penalty period will begin no earlier than the first day of the second month following the month we notify you of our reconsidered determination. The penalty period ends on the last day of the final month of the penalty period. Once a penalty period begins it will run continuously even if payments are intermittent.

Comments on Interim Final Rules

As noted above, on July 10, 2000 we published the interim final rules in the

Federal Register at 65 FR 42283 and provided a 60-day comment period. We received comments from twenty-five individuals and organizations. Some of the comments, however, pertained to matters that were not within the scope of these proposed rules. We do not address them in this preamble. Following are summaries of the comments and our responses to them.

Comment: Thirteen of the comments concerned what was perceived as vagueness in the regulation, including the meaning of the phrase ''knew or should have known.'' The commenters thought more specific guidelines and instructions are necessary in order to make the process fair and equitable. One commenter specifically mentioned that much of the information SSA makes available to the public is not readily accessible to those with visual impairments so the use of the phrase ''should have known'' may be suspect. Several others were concerned about how individuals with mental impairments may be adversely affected by the phrase ''should have known'' and believe SSA should monitor these actions closely to ensure equity. They were all concerned that the lack of detailed definitions and guidelines in the regulation may cause SSA to find that an individual should have known something when the impairment prevented the person from knowing the information.

Response: Section 1129A of the Act specifically provides for the imposition by SSA of a penalty if a person makes a statement or representation ''that the person knows or should know is false or misleading.'' These rules provide that, in determining whether a person ''knew or should have known,'' we will consider all the evidence in the record, including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) that the person may have had at the time. In addition, the rules provide that a decision to impose a penalty will be documented with the basis and rationale for that decision and will be based on the evidence and the reasonable inferences that can be drawn from that evidence, not on speculation or suspicion.

Further, operating instructions provide guidelines for SSA personnel to follow when making a determination that a person knew or should have known that a statement was false or misleading. In addition to considering any physical or mental impairment, these guidelines instruct personnel to consider the significance of the false or misleading statement in terms of its likely impact on the person's benefits, and the individual's:

- Understanding of reporting requirements;
- Knowledge of events that have occurred and should have been reported;
- Efforts to comply with requirements;
- Understanding of the obligation to return payments not due;
- Ability to understand and comply with reporting requirements;
- Experience in dealing with government agencies;
- Past history of providing inaccurate information; and
- Understanding of the language used by SSA.

We also note that a determination to impose an administrative sanction is an initial determination. Accordingly, an individual may follow the normal administrative and judicial review process by requesting reconsideration, a hearing before an administrative law judge, Appeals Council review and Federal Court review. A separate component of SSA will also review all penalty determinations to ensure uniformity in applying these instructions.

In developing these rules, instructions, and procedures, we have taken into account both the need for SSA to deal effectively with those situations in which individuals knowingly provide false and material evidence and the need to ensure that all claimants and beneficiaries are treated fairly.

Comment: Five comments were from people who work with individuals who are disabled and want to return to work. They believe there is ''widespread ignorance'' of the fact that people receiving disability benefits need to report income from work. They also believe that many reports of attempted work are not acted upon by SSA. They are concerned that failure to report income and incorrect processing by SSA personnel may lead to penalties against ''innocent'' individuals.

Response: A penalty will only be imposed when a person knowingly makes or causes to be made a statement or representation that is false or misleading or omits a material fact. A penalty will not be imposed solely because an individual has failed to make a report of work activity.

Comment: One commenter agreed that a penalty should be imposed if a person lies or makes a misleading statement about his or her medical condition if it is clearly in contrast with medical evidence. However, the commenter believes that a misleading statement about his or her personal life and activities should not be punishable.

Response: A penalty will only be imposed when a person knowingly makes a false or misleading statement of a material fact for use in determining any right to or the amount of benefits under titles II or XVI. Statements not related to eligibility for benefits or payment amounts will not cause a penalty.

Comment: Another commenter noted that benefits will continue while we make a reconsideration determination. After the reconsideration, the penalty will start the second month after notice of our reconsidered determination. He asks whether benefits will continue through higher levels of appeal or if this option was intentionally omitted for this procedure. He suggests that, if the intent is to reduce fraud and abuse of the system, this same philosophy should be applied to cessation and childhood redetermination cases that allow benefits to continue until all avenues of appeal are exhausted.

Response: As required by section 223 of the Act, disability benefit payments may continue beyond the reconsideration level during appeals of disability cessation decisions. This benefit continuation does not apply to non-medical decisions such as the decision to impose a penalty. For a penalty period of non-payment, the benefit payments will stop beginning the second month after we send notice of our reconsidered determination.

Comment: One commenter was concerned about whether a penalty could apply to an SSA employee who makes a false or misleading statement or an omission of a material fact. He was concerned that the definition could apply to employees who omit a material fact by neglecting to follow written procedures. He thought this would place an additional burden on personnel by ''adding an extra level of meticulousness'' in preparing decisions and work products. Finally, he asks whether this regulation will require that a person who witnesses an act which could cause a penalty must report such an act and whether SSA will defend the reporting person in the event of civil action against the reporter.

Response: These regulations apply to people who claim benefits under title II or title XVI of the Act and make or cause to be made, a false or misleading statement of a material fact in connection with that claim. They do not impose any additional requirements on SSA employees and how they perform their official duties. Rules of employee conduct are not affected by these regulations in any way. Finally, these

changes do not impose any new reporting requirement on any individuals.

Comment: One commenter was concerned about the financial effect the penalty will have on the individual. He believes that SSA has been able to recover its overpayments in the past using current methods and that imposing a penalty on an individual may result in the individual being placed on public assistance.

Response: Section 207 authorizes the Commissioner to impose a penalty to help prevent and respond to fraud and abuse in SSA's programs. These penalties are intended to deter individuals from providing false or misleading information about material facts in connection with a claim for benefits. Penalties will have little, if any, effect on the collection of overpayments. By law, Social Security benefits under title II and title XVI are paid only if certain eligibility requirements are met. SSA must ensure that those requirements are met based on proven facts. The penalty process is intended to help deter people from trying to meet those requirements fraudulently. It is possible that a person who does not meet the requirements for Social Security payments may qualify for public assistance just as he or she does now. We do not expect this change to have any substantial effect on the number of people on public assistance.

Comment: One commenter believes that a penalty should continue until all benefits obtained as a result of the false or misleading statement or omission of a material fact are recovered. She also believes that a penalty should apply to all individuals on a record, not just the person being sanctioned.

Response: This regulation is a result of a legislated change in the Social Security Act. The legislation itself prescribes the length of the penalty period. The length of the period is not affected by the amount of the benefits involved nor by the time required to recover any overpayment. The legislation also specifically states that the penalty will affect only the individual who makes, or causes to be made, the false or misleading statement.

Comment: One comment proposed that administrative law judges should be allowed to impose penalties.

Response: Any SSA employee may identify a case where a penalty may be appropriate and this may lead to the initiation of the penalty process. The decision to impose the penalty, however, is an initial determination. In order to allow the claimant the full range of appeal rights, this decision will be made at the initial level by the claims representative. The claims representative will also issue the notice of penalty and input the suspension action.

For the reasons discussed above, we have not changed the interim final rules based on the public comments. Therefore, the interim final rules adding 20 CFR 404.459 and 416.1340 published in the **Federal Register** (65 FR 42283) on July 10, 2000 are adopted as final without change.

Executive Order 12866

The Office of Management and Budget has reviewed these final rules in accordance with Executive Order (E.O.) 12866, as amended by E.O. 13258.

Regulatory Flexibility Act

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

Paperwork Reduction Act

This final rule imposes no reporting or recordkeeping requirements requiring clearance by the Office of Management and Budget.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age Survivor and Disability Insurance, Reporting and recordkeeping requirement, Social Security Income.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirement, Supplemental Security Income.

Dated: February 15, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Accordingly, the interim final rules adding 20 CFR Part 404.459 published at 65 FR 42283 on July 10, 2000 are adopted as final without change.

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

Accordingly, the interim final rules adding 20 CFR Part 416.1340 published at 65 FR 42283 on July 10, 2000 are adopted as final without change.

[FR Doc. 02–10467 Filed 4–26–02; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 874

[Docket No. 97P–0210]

Medical Devices; Ear, Nose and Throat Devices; Reclassification of the Endolymphatic Shunt Tube With Valve

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying the endolymphatic shunt tube with valve from class III (premarket approval) into class II (special controls). The device is intended to be implanted in the inner ear to relieve the symptoms of vertigo and hearing loss due to endolymphatic hydrops (increase in endolymphatic fluid) of Meniere's disease. FDA is also identifying the guidance document entitled ''Class II Special Controls Guidance Document: Endolymphatic Shunt Tube With Valve; Guidance for Industry and FDA'' (the guidance) as the special control that the agency believes will reasonably ensure the safety and effectiveness of the device. This reclassification is based on new information submitted in a reclassification petition by E. Benson Hood Laboratories, Inc. (Hood Laboratories). FDA is taking this action under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the guidance.

DATES: This rule is effective May 29, 2002.

FOR FURTHER INFORMATION CONTACT: Eric Mann, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 15, 2001 (66 FR 42809), FDA published a proposed rule to reclassify the

endolymphatic shunt tube with valve from class III (premarket approval) into class II (special controls) based on new information regarding this device. FDA also identified the document entitled ''Class II Special Controls Guidance Document: Endolymphatic Shunt Tube With Valve; Guidance for Industry and FDA'' as the special control capable of providing reasonable assurance of safety and effectiveness for this device.

Interested persons were invited to comment on the proposed rule by November 13, 2001. FDA received one comment. The comment, from the petitioner, Hood Laboratories, supported the proposed reclassification.

II. FDA's Conclusion

Based on a review of the available information referenced in the preamble to the proposed rule and placed on file in FDA's Dockets Management Branch, FDA concludes that the guidance document entitled ''Class II Special Controls Guidance Document: Endolymphatic Shunt Tube With Valve; Guidance for Industry and FDA,'' in conjunction with general controls, provides reasonable assurance of the safety and effectiveness of this device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document.

III. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, and the Regulatory Flexibility Act (5 U.S.C 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of the endolymphatic shunt tube with valve from class III will relieve all manufacturers of these devices of the cost of complying with the premarket approval requirements in section 515 of the act.

FDA believes that Hood Laboratories is the only manufacturer of the endolymphatic shunt tube with valve and Hood Laboratories states that they are in compliance with special controls proposed for this device. Therefore, the special controls will not impose significant new costs on the affected manufacturer. Because reclassification will reduce regulatory costs with respect to the endolymphatic shunt tube with valve, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VI. Paperwork Reduction Act of 1995

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

List of Subjects in 21 CFR Part 874

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 874 is amended as follows:

PART 874—EAR, NOSE, AND THROAT DEVICES

1. The authority citation for 21 CFR part 874 continues to read as follows:

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

2. Section 874.3850 is revised to read as follows:

§ 874.3850 Endolymphatic shunt tube with valve.

(a) *Identification.* An endolymphatic shunt tube with valve is a device that consists of a pressure-limiting valve associated with a tube intended to be implanted in the inner ear to relieve symptoms of vertigo and hearing loss due to endolymphatic hydrops (increase in endolymphatic fluid) of Meniere's disease.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document ''Class II Special Controls Guidance Document: Endolymphatic Shunt Tube With Valve; Guidance for Industry and FDA.''

Dated: April 15, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–10426 Filed 4–26–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice 3997]

Amendments to the United States Munitions List

AGENCY: Bureau of Political-Military Affairs, Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is revising Category I—Firearms—of the U.S. Munitions List (USML). The title of the revised category is being changed to include close assault weapons and combat shotguns. Certain interpretations (*e.g.,* definitions) of firearms and their components and parts previously found elsewhere in the International Traffic in Arms Regulations (ITAR) are being consolidated in the revised text for Category I. Reference to related

exemptions from export licensing requirements of the ITAR are also being added. Further, certain accessories, such as silencers, sound suppressors and flash suppressors are, henceforth, designated significant military equipment (''SME'').

EFFECTIVE DATE: April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Berry, Chief, Arms Licensing Division, Office of Defense Trade Controls, Department of State, Telephone (202) 663–2806 or FAX (202) 261–8199. ATTN: Regulatory Change, USML Part 121, Category I.

SUPPLEMENTARY INFORMATION: The Departments of State and Defense, in consultation with the Department of Commerce and other U.S. Government agencies, are reviewing items controlled on the U.S. Munitions List (USML) in order to ensure that the list of defense articles and defense services controlled pursuant to the International Traffic in Arms Regulations is up-to-date and appropriately reflects current U.S. security and foreign policy interests. Consistent with the policy announced by the United States at the May 2000 NATO Ministerial meeting, the Executive Branch initiated a procedure that involves a four-year review cycle, whereby one-quarter of the USML is reviewed each year. This policy and procedure is consistent with Section 38(f) of the Arms Export Control Act (AECA), which states that the President shall periodically review the items on the USML to determine what items, if any, no longer warrant export controls under Section 38. Five categories are currently under review: Categories I, V, VIII, XIV and XVI. This rulemaking concerns the results of the Category I review. The results pertaining to the remaining four categories will be published upon completion of inter-agency review. With regard to Category I, no substantive additions or deletions of the articles and services controlled under this heading by Category I are being made. But, there are substantial changes in the title and in the text that are designed to provide greater clarity and precision for defense industry exporters and closer scrutiny and reporting of certain items (*e.g.,* automatic weapons and accessories, such as silencers), and to consolidate various other provisions of the ITAR relating to firearms. Specifically, the new title of this category is ''Firearms, Close Assault Weapons and Combat Shotguns.'' Category I is being amended to move fully automatic firearms from paragraph (a) to paragraph (b) and combat shotguns from paragraph (a) to (d). The components, parts, accessories and attachments currently in paragraph (d) are moved to a new paragraph (h). The silencers and suppressors in paragraph (b) are re-designated as Significant Military Equipment (SME) and moved to paragraph (e), with the remainder of the items currently in paragraph (b) moving to a new paragraph (f). The barrels, cylinders, receivers (frames) and breech mechanisms in paragraph (d) are moved to a new paragraph (g). The technical data and defense services currently in (e) are moved to a new paragraph (i). The text from § 121.9 is moved to a new paragraph (j) and a Note at the end of the category. Section 121.9 is being reserved.

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 533 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application to Executive Orders 12372 and 13123. However, interested persons are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, USML Part 121, 12th Floor, SA–1, Washington, D.C. 20522–0112. Such persons must be registered with the Department's Office of Defense Trade Controls (DTC) pursuant to the registration requirements of section 38 of the Arms Export Control Act.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Part 121, is amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 is revised to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2278, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

2. In § 121.1, Category I—Firearms is revised to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category I—Firearms, Close Assault Weapons and Combat Shotguns

* (a) Nonautomatic and semi-automatic firearms to caliber .50 inclusive (12.7 mm).

* (b) Fully automatic firearms to .50 caliber inclusive (12.7 mm).

* (c) Firearms or other weapons (e.g. insurgency-counterinsurgency, close assault weapons systems) having a special military application regardless of caliber.

* (d) Combat shotguns. This includes any shotgun with a barrel length less than 18 inches.

* (e) Silencers, mufflers, sound and flash suppressors for the articles in (a) through (d) of this category and their specifically designed, modified or adapted components and parts.

(f) Riflescopes manufactured to military specifications (See category XII(c) for controls on night sighting devices.)

* (g) Barrels, cylinders, receivers (frames) or complete breech mechanisms for the articles in paragraphs (a) through (d) of this category.

(h) Components, parts, accessories and attachments for the articles in paragraphs (a) through (g) of this category.

(i) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (h) of this category. Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

(j) The following interpretations explain and amplify the terms used in this category and throughout this subchapter:

(1) A firearm is a weapon not over .50 caliber (12.7 mm) which is designed to expel a projectile by the action of an explosive or which may be readily converted to do so.

(2) A rifle is a shoulder firearm which can discharge a bullet through a rifled barrel 16 inches or longer.

(3) A carbine is a lightweight shoulder firearm with a barrel under 16 inches in length.

(4) A pistol is a hand-operated firearm having a chamber integral with or permanently aligned with the bore.

(5) A revolver is a hand-operated firearm with a revolving cylinder containing chambers for individual cartridges.

(6) A submachine gun, ''machine pistol'' or ''machine gun'' is a firearm originally designed to fire, or capable of being fired, fully automatically by a single pull of the trigger.

Note: This coverage by the U.S. Munitions List in paragraphs (a) through (i) of this category excludes any non-combat shotgun with a barrel length of 18 inches or longer, BB, pellet, and muzzle loading (black powder) firearms. This category does not cover riflescopes and sighting devices that are not manufactured to military specifications. It also excludes accessories and attachments (e.g., belts, slings, after market rubber grips, cleaning kits) for firearms that do not enhance the usefulness, effectiveness, or capabilities of the firearm, components and parts. The Department of Commerce regulates the export of such items. See the Export Administration Regulations (15 CFR parts 730–799). In addition, license exemptions for the items in this category are available in various parts of this subchapter (e.g. §§ 123.17, 123.18 and 125.4).

* * * * *

§ 121.9 [Removed and Reserved]

3. Section 121.9 is removed and reserved.

Dated: April 5, 2002.

John R. Bolton,

Under Secretary for Arms Control and International Security, Department of State.

[FR Doc. 02–10474 Filed 4–26–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8990]

RIN 1545–AX66

Equity Options With Flexible Terms; Qualified Covered Call Treatment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations providing guidance on the application of the rules governing qualified covered calls. The new rules address concerns that were created by the introduction of new financial instruments several years after the enactment of the qualified covered call rules. The final regulations provide guidance to taxpayers writing equity call options.

DATES: *Effective Date:* These regulations are effective April 29, 2002.

Applicability Date: For dates of applicability, see §§ 1.1092(c)–1(c), 1.1092(c)–2(d), 1.1092(c)–3(c), and 1.1092(c)–4(g).

FOR FURTHER INFORMATION CONTACT: Pamela Lew, (202) 622–3950 or Viva Hammer, (202) 622–0869 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On January 18, 2001, the IRS published in the **Federal Register** proposed regulations (REG–115560–99, 66 FR 4751) addressing various issues concerning qualified covered call (QCC) options under section 1092(c)(4). No requests to speak at a public hearing were received, and no public hearing was held.

The proposed regulations provide that equity options with flexible terms (FLEX options) may be QCC options as long as they satisfy the general rules for QCC treatment described in section 1092(c)(4), are not for a term of longer than one year, and meet other specified requirements. In addition, an equity option with standardized terms must be outstanding for the underlying equity. For purposes of applying the general rules, the bench marks will be the same as those for an equity option with standardized terms on the same stock having the same applicable stock price.

The proposed regulations also provide that certain over-the-counter (OTC) options may be QCC options so that OTC options that are economically similar to FLEX options may receive the same tax treatment as FLEX options. Specifically, the proposed regulations provide that an OTC option is eligible for QCC treatment if it is entered into with a person registered with the Securities and Exchange Commission (SEC) as a broker-dealer or alternative trading system and meets the same requirements for QCC treatment that apply to FLEX options.

The proposed regulations further provide that equity options with standardized terms with maturities of longer than one year cannot be QCC options.

Comments were requested about the proposed one-year limit for all QCCs, including a discussion of time limitations in general. If a commentator recommended a time limitation greater than one year or recommended that there be no time limitation, a detailed, comprehensive description of possible solutions to the problem of increased risk reduction caused by longer term options was requested. Commentators were also asked to address the administrability of any proposed solutions.

After revisions to take into account several of the comments submitted, the proposed regulations are adopted by this Treasury decision.

Summary of Principal Comments

Four commentators responded to the request for comments. Two of the commentators addressed only the proposed 1-year limitation applicable to all QCC options. A third commentator addressed the proposed 1-year limit as well as a number of other issues. The fourth commentator focused on issues other than the proposed 1-year limitation.

One-Year Term Limitation

A number of commentators object to the proposal to limit QCC treatment to options with a duration of one year or less. These commentators note that the statute does not contain any limitation on the maximum term for QCCs and argue that a one-year limitation would be overly harsh. Among other things, they note that a strict one-year rule would preclude QCC status for even out-of-the-money options. One commentator notes that section 1092(c)(4) does not remove a QCC option completely from the straddle rules. Paragraphs (c)(4)(E) and (f) of section 1092 provide special limitations on QCCs for recognition of loss and suspension of holding period.[1] This commentator suggests that these rules limit the extent to which longer-term QCCs would lead to results inconsistent with the purposes of section 1092.

In response to the request in the preamble to the proposed regulation for alternative regimes to address the increased risk reduction created by longer-term options, two commentators suggest an adjustment to the ''applicable stock price'' to reflect forward pricing concepts. These commentators suggest that the unadjusted applicable stock price, as determined on the date the option is granted, be multiplied by a simple adjusting factor to produce an

[1] Under section 1092(c)(4)(E), the exception for QCCs does not apply to a covered call that would otherwise qualify for the exception if one leg is disposed of at a loss in one year, gain on the other position is includible for a later year, and less than 30 days has elapsed between these transactions. Under section 1092(f), if a taxpayers grants an in-the-money QCC, then loss on the call is treated as long-term capital loss if gain on the underlying stock would be long-term capital gain. In addition, the holding period is suspended for the period during which the taxpayer is the grantor of the option.

applicable stock price adjusted for the passage of time. For each additional term year, the factor would be increased by 5%. For example, the factor for a one-to-two year option would be 105%, and the factor for a two-to-three year option would be 110%. The adjusted applicable stock price would then be used to determine the applicable benchmarks and the lowest permitted QCC strike price. The commentators prefer, however, no limitation on the term of QCC options.

Clarification of ''Single Fixed Strike Price''

Proposed § 1.1092(c)–1(c)(1)(ii) requires a QCC option to have ''a single fixed strike price stated as a dollar amount.'' One commentator suggests that this phrase does not account for adjustments to the strike price due to certain corporate events, such as stock splits, stock dividends, spin-offs, mergers, or substantial cash dividends that reduce the market value of the stock by at least 10%. For example, a strike price might not be considered fixed if the underlying stock split two-for-one and the option's strike price were adjusted to one-half of its original strike price. The commentator recommends that the language be modified to account for these events.

Clarification That the Lowest Qualified Benchmark for a FLEX Option Is the Same as for an Equity Option With Standardized Terms

Proposed § 1.1092(c)–1(c)(2)(i) provides that to determine whether a FLEX option is deep in the money, the taxpayer must use the same lowest qualified benchmark that is used for a standardized option on the same stock having the same applicable stock price. One commentator argues that the language in the proposed regulation is ambiguous. The commentator suggests that the language in the proposed regulation be changed to provide that the lowest qualified benchmark for a FLEX option is equal to the lowest *available* strike price at which a standardized call option can be written without being deep in the money.

Requirement That an Equity Option With Standardized Terms Exist at the Time an Equity Option With Flexible Terms or Qualifying Over-the-Counter Option Is Written

Under § 1.1092(c)–1(c)(1)(iv) of the proposed regulation, a FLEX option can be a QCC option only if ''[a]n equity option with standardized terms is outstanding for the underlying equity.'' Under exchange rules, trading in a FLEX option cannot be *authorized* unless trading in a standardized option on the same stock has been *authorized.* Although a commentator believes it unlikely that a FLEX option would be written on a stock for which there were no outstanding standardized options, the commentator sees no reason to impose this restriction. Thus, the commentator recommends that the word ''available'' be substituted for the word ''outstanding.''

Clarification of ''Equity Option With Standardized Terms''

Under proposed § 1.1092(c)–1(d)(3), an equity option with standardized terms is defined as ''an equity option that is traded on a national securities exchange registered with the Securities and Exchange Commission and that is not an equity option with flexible terms.'' One commentator notes that there is no definition of ''equity option'' and wonders whether the definition of equity option in section 1256(g) applies here. That definition would include options on narrow based indexes. In addition, because an equity option with standardized terms is defined as a negative (i.e., anything that is not a FLEX option), if the exchanges approve a new option product that does not meet the definition of FLEX option, that product might meet the definition of a standardized option, thus affecting the application of the regulations for FLEX options. The commentator did not provide alternative regulatory language.

Clarification of ''Entered Into With''

Under proposed § 1.1092(c)–3(c)(2)(i), a qualifying OTC option must be ''entered into with'' a person registered with the SEC as a broker-dealer. One commentator is concerned that this phrase implies that the broker-dealer must act as a principal in the transaction. The commentator requests that the language be modified to say that the broker-dealer may be a principal to the transaction or may serve as an agent.

Add Banks to the List of Parties With or Through Whom a QCC May Be Transacted

One commentator requests that banks be added to the list of parties with or through whom a QCC transaction may be effected. The commentator notes that under the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338 (1999), banks will be required to interpose a broker-dealer registered with the SEC in transactions with customers who are not ''qualified investors.'' Banks will be permitted to function as broker-dealers with respect to ''qualified investors.''

The commentator suggests defining a bank as a ''bank within the meaning of section 3(a)(6) of the Securities Exchange Act of 1934 and the regulations adopted thereunder.'' The commentator argues that any such bank would be subject to a banking regulatory authority within the United States and would generally be subject to record-keeping requirements.

Explanation of Provisions

Limitation of Option Term

As originally enacted in 1981, section 1092 did not apply to stock or to options on stock. In the legislative history to the Tax Reform Act of 1984, the House Ways and Means Committee stated that taxpayers had attempted to exploit the exemption from the loss-deferral rule for exchange-traded stock options to defer tax on income from unrelated transactions. H. Rep. No. 432, 98th Cong., 2d Sess. 1266 (1984). The Committee stated that a typical abusive stock option straddle ''involves the acquisition of 'deep-in-the-money' offsetting option positions. Regardless of whether the value of the underlying stock increases or decreases, one option position will result in a loss that can be realized for tax purposes, while the other position results in a gain of approximately equal size that can be deferred until the next year.'' *Id.* In response to these concerns, Congress generally ended the exemption from the straddle rules for stock and exchange-traded options.

The House Ways and Means Committee noted, however, that the extension of the straddle rules to stock options and stock would affect the widely used investment strategy of writing call options on stock owned by the taxpayer. The Committee stated that it might be appropriate to exempt transactions that were undertaken primarily to enhance the taxpayer's investment return on the stock and not to reduce the taxpayer's risk of loss on the stock. Congress therefore amended section 1092 to permit a taxpayer owning stock and writing a covered call option generally to avoid straddle treatment if certain conditions were met. One condition was that the strike price of the call could not be less than a statutorily-prescribed level relative to the market price of the underlying stock. In establishing this exception to the straddle rules, Congress granted the Secretary broad regulatory authority to modify section 1092 to take account of changes in the practices of options exchanges or to prevent tax avoidance.

Since 1984, numerous changes have occurred in the practices of options

exchanges. In 1984, no exchange-traded option had a term of greater than nine months. By contrast, certain exchange-traded options currently may have terms of up to 33 months. In light of these changes, the IRS and Treasury have considered certain economic characteristics of qualified covered call transactions as they relate to the risk reduction effects of longer-term options.

One way of looking at the risk reduction effect of a covered call option focuses on the day-to-day (or intra-day) relative changes in value of the stock and the option. In general, the values of stock and a written call option on the stock vary inversely when viewed from the perspective of the person owning the stock and writing a call option. Each movement in the stock price produces a movement in the value of the written call that, at least partially, offsets the change in value of the long position in the stock.

Modern option pricing literature describes this relationship between the change in value of the underlying stock and the change in value of the option using the parameter ''Delta''. If a change in value of the stock results in an equal movement in the value of the option, Delta equals 1. If the change in value of the option is less than the change in value of the stock, then Delta is less than 1. From the perspective of a call option writer, because of the inverse relationship between changes in stock price and changes in option value described above, Delta represents the amount of offset that a change in stock value has upon the value of the written call option. Delta values vary with a number of factors, including the extent to which the option is in or out of the money and the term of the option. All else being equal, longer-term options have higher Delta values and, therefore, have a greater risk reduction potential than short-term options with respect to movements in stock prices.

Another economic characteristic of longer-term covered call options is increased potential for the immediate recognition of a stock loss and the deferral of any gain arising from a related option. As noted above, when section 1092(c)(4) was enacted, no qualified covered call option had a term of more than nine months, and the mismatch for a QCC thus could not have spanned more than one taxable year. With the advent of longer-term options, the potential for a mismatch between a loss and the deferral of related income can extend over many taxable years, which may not have been contemplated by Congress when the QCC provisions were enacted.

After reviewing taxpayers' comments received in light of these economic considerations, the IRS and Treasury have decided to adopt a forward pricing approach for the determination of the applicable stock price for an option with a term greater than 12 months. To determine the applicable stock price for an option with a term greater than 12 months, taxpayers are required to multiply the statutory applicable stock price by a factor, which represents a noncompounded two percent per quarter increase in the applicable strike price. Based on certain assumptions regarding the volatility of the underlying stock and the risk-free interest rate, the use of such factors for options with a relatively short term (i.e., 33 months or less) will produce Deltas that are generally similar to those for a nine-month option with no adjustment to the applicable strike price. Because no exchange-traded option currently has a term of more than 33 months, and because the application of the approach set forth above to options with terms longer than 33 months may permit the use of such options for tax avoidance, the IRS and Treasury believe that it would be inappropriate to extend this approach to such options. Thus, no option will constitute a qualified covered call option if it has a term of greater than 33 months. Additional guidance about the maximum term limit may be provided by the Commissioner in guidance published in the Internal Revenue Bulletin. This could occur, for example, if the option exchanges commence trading of equity options with standardized terms that expire more than 33 months after the date of issuance.

The definition of a QCC option also affects a number of other Code sections. These are generally provisions that require a taxpayer to bear economic risk with respect to an asset for purposes of establishing a requisite holding period in the asset. See sections 246(c)(1), 852(b)(4)(C), 857(b)(8)(B), 901(k)(5), 1059(d)(3), and 1259(c)(3)(A)(iii). The IRS and the Treasury have taken into account the interaction of the QCC qualification rules and these other Code sections in light of the risk reduction potential of longer-term options. If, however, experience suggests that longer-term QCC options are being exploited to achieve risk reduction while allowing taxpayers to establish holding periods in ways that are inconsistent with another Code provision (e.g., section 1259), the IRS and Treasury may reconsider the issue of term limitations for QCCs, either generally for purposes of section 1092 or specifically for purposes of such other Code provision.

Clarification of ''single fixed strike price''

After consideration of the comment submitted, a definition for ''single fixed strike price'' is added at § 1.1092(c)-4(d), providing that adjustments to the strike price for certain significant corporate events subsequent to the writing of the option will not cause the option to fail the requirement of a single fixed strike price. The definition is intended to cover adjustments to the strike price made under Section 11 of Article VI of the Options Clearing Corporation By-Laws.

Clarification That the Lowest Qualified Benchmark for a FLEX Option Is the Same as for an Equity Option With Standardized Terms

After consideration of the comment submitted, examples have been added at § 1.1092(c)-2(c)(2)(ii) to clarify that the lowest qualified benchmark for a FLEX option is the same as the lowest qualified benchmark for an equity option with standardized terms on the same stock having the same applicable stock price.

Requirement That an Equity Option With Standardized Terms Exist at the Time an Equity Option With Flexible Terms or Qualifying Over-the-Counter Option Is Written

After consideration of the comment submitted, the language is finalized as proposed.

This provision was inserted in the proposed regulation for two reasons. The first reason was to provide benchmarks for FLEX options. Because FLEX option strike prices can be written in one penny intervals, without this provision every FLEX option would be deep-in-the-money if the strike price were one penny less than the applicable stock price. By tying every FLEX option to a standardized option, the benchmarks are the strike prices set by the exchanges for standardized options. For this purpose, an authorized standardized option would suffice.

The second reason underlying this provision is to facilitate the discovery of attempts to use off-market pricing of FLEX options or qualifying OTC options as a method of effecting collateral transactions. If a FLEX option or qualifying OTC option were written for an off-market premium, that would warn of the potential for the existence of one or more other transactions. For example, a qualifying OTC option might be written by a corporation and held by a shareholder. If the premium were

excessively low compared to that for a standardized option on that same stock, the additional value received by the holder might be appropriately characterized as a dividend. Thus, with an outstanding standardized option on the same stock, the existence of an excessively low premium for a FLEX option would be more transparent.

Clarification of ''Equity Option With Standardized Terms''

After consideration of the comment submitted, a new definition for ''equity option with standardized terms'' is provided at § 1.1092(c)–4(b). The factors listed in this section were based on the rules of the exchanges establishing required provisions of exchange-traded equity options.

Clarification of ''Entered Into With''

After consideration of the comment submitted, a clarification is added to § 1.1092(c)–4(c)(2)(i) to explain that the broker-dealer may be a principal to the transaction or can serve as an agent.

Add Banks to the List of Parties With or Through Whom a QCC May Be Transacted

After consideration of the comment submitted and review of the recordkeeping requirements of 12 CFR 12.3, 12 CFR 208.34, and 12 CFR 344.4, banks that are required to comply with these recordkeeping requirements are added to the list of parties with or through whom a qualifying over-the-counter option may be transacted.

Other Provisions

Section § 1.1092(c)–1 was redesignated § 1.1092(c)–2 to facilitate the insertion of the general term limitations applying to all QCC options. The definitions in former § 1.1092(c)–1(d) were moved to § 1.1092(c)–4 to facilitate consolidation of definitions that apply to QCC options.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the only category of small entities likely to be affected are small broker-dealers or small federally-regulated financial institutions who may be included among the financial intermediaries implementing the changes effected by these regulations. The requirements contained in these regulations do not impose more than a minimal compliance burden because the required changes in computer programs and back office procedures are insignificant. In addition, these regulations do not impose any recordkeeping or reporting requirements and therefore impose minimal compliance costs, if any, upon any small entities that may be affected. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Drafting Information

The principal authors of these regulations are Pamela Lew, Office of Associate Chief Counsel (Financial Institutions and Products) and Viva Hammer, Office of Tax Policy (Department of Treasury). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.1092(c)–2 also issued under 26 U.S.C. 1092(c)(4)(H).

Section 1.1092(c)–3 also issued under 26 U.S.C. 1092(c)(4)(H).

Section 1.1092(c)–4 also issued under 26 U.S.C. 1092(c)(4)(H). * * *

Par. 2. Section 1.1092(c)–1 is redesignated as § 1.1092(c)–2.

Par. 3. A new § 1.1092(c)–1 is added to read as follows:

§ 1.1092(c)–1 Qualified covered calls.

(a) *In general.* Section 1092(c) defines a straddle as offsetting positions with respect to personal property. Under section 1092(d)(3)(B)(i)(I), stock is personal property if the stock is part of a straddle that involves an option on that stock or substantially identical stock or securities. Under section 1092(c)(4), however, writing a qualified covered call option and owning the optioned stock is not treated as a straddle under section 1092 if certain conditions, described in section 1092(c)(4)(B), are satisfied. Section 1092(c)(4)(H) authorizes the Secretary to modify these conditions to carry out the purposes of section 1092(c)(4) in light of changes in the marketplace.

(b) *Term limitation*—(1) *General rule.* Except as provided in paragraph (b)(2) of this section, an option is not a qualified covered call unless it is granted not more than 12 months before the day on which the option expires or satisfies term limitation and qualified benchmark requirements established by the Commissioner in guidance published in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii)(*b*) of this chapter).

(2) *Special benchmark rule for an option granted not more than 33 months before the day on which the option expires*—(i) *In general.* The 12-month limitation described in paragraph (b)(1) of this section is extended to 33 months provided the lowest qualified benchmark is determined using the adjusted applicable stock price, as defined in § 1.1092(c)–4(e).

(ii) *Examples.* The following examples illustrate the rules set out in paragraph (b)(2)(i) of this section:

Example 1. Taxpayer owns stock in Corporation X. Taxpayer writes an equity option with standardized terms on Corporation X stock through a national securities exchange with a term of 21 months. The applicable stock price for Corporation X stock is $100. The bench marks for a 21-month equity option with standardized terms with an applicable stock price of $100 will be based upon the adjusted applicable stock price. Using the table at § 1.1092(c)–4(e), the applicable stock price of $100 is multiplied by the adjustment factor 1.12, resulting in an adjusted applicable stock price of $112. Using the bench marks for an equity option with standardized terms with an adjusted applicable stock price of $112, the highest available strike price less than the adjusted applicable stock price is $110, and the second highest strike price less than the adjusted applicable stock price is $105. Therefore, a 21-month equity call option with standardized terms on Corporation X stock will not be deep in the money if the strike price is not less than $105.

Example 2. Taxpayer owns stock in Corporation Y. Taxpayer writes an equity option with standardized terms on Corporation Y stock through a national securities exchange with a term of 21 months. The applicable stock price for Corporation Y stock is $13.25. The bench marks for a 21-month equity option with standardized terms with an applicable stock price of $13.25 will be based upon the adjusted applicable stock price. Using the

table at § 1.1092(c)–4(e), the applicable stock price of $13.25 is multiplied by the adjustment factor 1.12, resulting in an adjusted applicable stock price of $14.84. Using the bench marks for an equity option with standardized terms with an adjusted applicable stock price of $14.84, the highest available strike price less than the adjusted applicable stock price is $12.50. However, under section 1092(c)(4)(D), the lowest qualified bench mark can be no lower than 85% of the applicable stock price, which for Corporation Y stock is $12.61 (85% of the adjusted applicable stock price of $14.84). Thus, because the highest available strike price less than the adjusted applicable stock price for an equity option with standardized terms is lower than the lowest qualified bench mark under section 1092(c)(4)(D), the lowest strike price at which a qualified covered call option can be written is the next higher strike price, or $15.00. Therefore, a 21-month equity call option with standardized terms on Corporation Y stock will not be deep in the money if the strike price is not less than $15.

(c) *Effective date.* This section applies to qualified covered call options entered into on or after July 29, 2002.

Par. 4. Section 1.1092(c)–4 is added to read as follows:

§ 1.1092(c)–4 Definitions.

The following definitions apply for purposes of §§ 1.1092(c)–1 through 1.1092(c)–3:

Par. 5. Section 1.1092(c)–2 is amended as follows:

1. Paragraph (b) is revised.
2. Paragraph (c) is added.
3. The paragraph in § 1.1092(c)–2 indicated in the first column is redesignated as a paragraph in § 1.1092(c)–4 as indicated in the second column as follows:

§ 1.1092(c)–2	§ 1.1092(c)–4
(d)(1) introductory text	(a) introductory text
(d)(1)(i) introductory text.	(a)(1) introductory text
(d)(1)(i)(A)	(a)(1)(i)
(d)(1)(i)(B)	(a)(1)(ii)
(d)(1)(i)(C)	(a)(1)(iii)
(d)(1)(i)(D)	(a)(1)(iv)
(d)(1)(ii) introductory text.	(a)(2) introductory text
(d)(1)(ii)(A)	(a)(2)(i)
(d)(1)(ii)(B)	(a)(2)(ii)
(d)(2)	(f)

4. Paragraph (d) is revised.
5. Paragraph (e) is removed.

The revisions and additions read as follows:

§ 1.1092(c)–2 Equity options with flexible terms.

* * * * *

(b) *No effect on lowest qualified bench mark for standardized options.* The availability of strike prices for equity options with flexible terms does not affect the determination of the lowest qualified bench mark, as defined in section 1092(c)(4)(D), for an equity option with standardized terms.

(c) *Qualified covered call option status—(1) Requirements.* An equity option with flexible terms is a qualified covered call option only if—

(i) The option meets the requirements of section 1092(c)(4)(B) and § 1.1092(c)–1 (taking into account paragraph (c)(2) of this section);

(ii) The only payments permitted with respect to the option are a single fixed premium paid not later than 5 business days after the day on which the option is granted, and a single fixed strike price, as defined in § 1.1092(c)–4(d), that is payable entirely at (or within 5 business days of) exercise;

(iii) An equity option with standardized terms is outstanding for the underlying equity; and

(iv) The underlying security is stock in a single corporation.

(2) *Lowest qualified bench mark*—(i) *In general.* For purposes of determining whether an equity option with flexible terms is deep in the money within the meaning of section 1092(c)(4)(C), the lowest qualified bench mark under section 1092(c)(4)(D) is the same for an equity option with flexible terms as the lowest qualified bench mark for an equity option with standardized terms on the same stock having the same applicable stock price.

(ii) *Examples.* The following examples illustrate the rules set out in paragraph (c)(2)(i) of this section:

Example 1. Taxpayer owns stock in Corporation X. Taxpayer writes an equity call option with flexible terms on Corporation X stock through a national securities exchange for a term of not more than 12 months. The applicable stock price for Corporation X stock is $73.75. Using the bench marks for an equity option with standardized terms with an applicable stock price of $73.75, the highest available strike price less than the applicable stock price is $70, and the second highest strike price less than the applicable stock price is $65. Therefore, an equity call option with flexible terms on Corporation X stock with a term of 90 days or less will not be deep in the money if the strike price is not less than $70. If the term is greater than 90 days, an equity call option with flexible terms on Corporation X will not be deep in the money if the strike price is not less than $65.

Example 2. Taxpayer owns stock in Corporation Y. Taxpayer writes a 9-month equity call option with flexible terms on Corporation Y stock through a national securities exchange. The applicable stock price for Corporation Y stock is $14.75. Using the bench marks for an equity option with standardized terms with an applicable stock price of $14.75, the highest available strike price less than the applicable stock price is $12.50. However, under section 1092(c)(4)(D), the lowest qualified bench mark can be no lower than 85% of the applicable stock price, which for Corporation Y stock is $12.54. Thus, because the highest available strike price less than the applicable stock price for an equity option with standardized terms is lower than the lowest qualified bench mark under section 1092(c)(4)(D), the lowest strike price at which a qualified covered call option can be written is the next higher strike price, or $15.00. This $15.00 strike price requirement for a qualified covered call option applies to equity options with flexible terms, equity options with standardized terms, and qualifying over-the-counter options.

Example 3. Taxpayer owns stock in Corporation Z. On May 8, 2003, Taxpayer writes a 21-month equity call option with flexible terms on Corporation Z stock through a national securities exchange. The applicable stock price for Corporation Z stock is $100. The bench marks for a 21-month equity option with standardized terms with an applicable stock price of $100 will be based upon the adjusted applicable stock price. Using the table at § 1.1092(c)–4(e), the applicable stock price of $100 is multiplied by the adjustment factor 1.12, resulting in an adjusted applicable stock price of $112. The highest available strike price less than the adjusted applicable stock price is $110, and the second highest strike price less than the adjusted applicable stock price is $105. Therefore, a 21-month equity call option with flexible terms on Corporation Z stock will not be deep in the money if the strike price is not less than $105.

(d) *Effective date*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, this section applies to equity options with flexible terms entered into on or after January 25, 2000.

(2) *Effective date for paragraphs (b) and (c) of this section.* Paragraphs (b) and (c) of this section apply to equity options with flexible terms entered into on or after July 29, 2002.

Par. 6. Section 1.1092(c)–3 is added to read as follows:

§ 1.1092(c)–3 Qualifying over-the-counter options.

(a) *In general.* Under section 1092(c)(4)(B)(i), an equity option is not a qualified covered call option unless it is traded on a national securities exchange that is registered with the Securities and Exchange Commission or other market that the Secretary determines has rules adequate to carry out the purposes of section 1092(c)(4). In accordance with section 1092(c)(4)(H), this requirement is modified as provided in paragraph (b) of this section.

(b) *Qualified covered call option status.* A qualifying over-the-counter option, as defined in § 1.1092(c)–4(c), is

a qualified covered call option if it meets the requirements of §§ 1.1092(c)–1 and 1.1092(c)–2(c) after using the language ''qualifying over-the-counter option'' in place of ''equity option with flexible terms''. For purposes of this paragraph (b), a qualifying over-the-counter option is deemed to satisfy the requirements of section 1092(c)(4)(B)(i).

(c) *Effective date.* This section applies to qualifying over-the-counter options entered into on or after July 29, 2002.

Par. 7. Section 1.1092(c)–4 is further amended as follows:

1. Newly designated paragraphs (a)(1)(iv), (a)(2) introductory text, and (a)(2)(i) are revised.

2. Paragraphs (b), (c), (d), (e), and (g) are added.

The revisions and additions read as follows:

§ 1.1092(c)–4 Definitions.

* * * * *

(a) * * *

(1) * * *

(iv) Any changes to the Security Exchange Act Releases described in paragraphs (a)(1)(i) through (iii) of this section that are approved by the Securities and Exchange Commission; or

(2) That is traded on any national securities exchange that is registered with the Securities and Exchange Commission (other than those described in the Security Exchange Act Releases set forth in paragraph (a)(1) of this section) and is—

(i) Substantially identical to the equity options described in paragraph (a)(1) of this section; and

* * * * *

(b) *Equity option with standardized terms* means an equity option—

(1) That is traded on a national securities exchange registered with the Securities and Exchange Commission;

(2) That, on the date the option is written, expires on the Saturday following the third Friday of the month of expiration;

(3) That has a strike price that is set at a uniform minimum strike price interval, that is established by the applicable national securities exchange registered with the Securities and Exchange Commission, and that is not less than $1.00; and

(4) That has stock in a single corporation as its underlying security.

(c) *Qualifying over-the-counter option* means an equity option that—

(1) Is not traded on a national securities exchange registered with the Securities and Exchange Commission; and

(2) Is entered into with—

(i) A broker-dealer, acting as principal or agent, who is registered with the Securities and Exchange Commission under section 15 of the Securities Act of 1934 (15 U.S.C. 78a through 78mm) and the regulations thereunder and who must comply with the recordkeeping requirements of 17 CFR 240.17a–3; or

(ii) An alternative trading system under 17 CFR 242.300 through 17 CFR 242.303; or

(iii) A person, acting as principal or agent, who must comply with the recordkeeping requirements for securities transactions described in 12 CFR 12.3, 12 CFR 208.34, or 12 CFR 344.4.

(d) *Single fixed strike price* means a strike price that is fixed, determinable, and stated as a dollar amount on the date the option is written. An option will not fail to have a single fixed strike price if, after the date the option is written, the strike price is adjusted to account for the effects of a dividend, stock dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or reclassification with respect to the underlying security, or a merger, consolidation, dissolution, or liquidation of the issuer of the underlying security.

(e) *Adjusted applicable stock price* means the applicable stock price, as defined in section 1092(c)(4)(G), adjusted for time. To determine the adjusted applicable stock price, the applicable stock price, which is determined in accordance with the rules in section 1092(c)(4)(G), is multiplied by an adjustment factor. The adjustment factor table is as follows:

Option term (in months)		Adjustment factor
Greater than	Not more than	
12	15	1.08
15	18	1.10
18	21	1.12
21	24	1.14
24	27	1.16
27	30	1.18
30	33	1.20

* * * * *

(g) *Effective dates.* (1) Except for paragraph (a)(2) of this section, paragraph (a) of this section applies to equity options with flexible terms entered into on or after January 25, 2000. Paragraph (a)(2) of this section applies to equity options with flexible terms entered into on or after July 29, 2002.

(2) Paragraphs (b), (c), (d), and (e) of this section apply to equity options entered into on or after July 29, 2002.

(3) Paragraph (f) of this section applies to equity options entered into on or after January 25, 2000.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: April 12, 2002.

Mark A. Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 02–9929 Filed 4–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 8992]

RIN 1545–AW67

Information Reporting for Payments of Interest on Qualified Education Loans; Magnetic Media Filing Requirements for Information Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to the information reporting requirements under section 6050S for payments of interest on qualified education loans, including the filing of information returns on magnetic media. The final regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The regulations provide guidance to payees receiving interest payments on qualified education loans.

DATES: *Effective date:* These regulations are effective April 29, 2002.

Applicability date: For date of applicability, *see* § 1.6050S–3(g).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Donna Welch, (202) 622–4910; and concerning the magnetic media filing specifications, waivers for filing on magnetic media, and extensions of time, contact the Internal Revenue Service, Martinsburg Computing Center, (304) 263–8700 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1678. Responses to this collection of information are mandatory.

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

The estimated burden for the reporting in these regulations is reflected in the burden for Form 1098–E.

Estimated total annual reporting burden for 2000 for Form 1098–E: 483,098 hours.

Estimated number of responses for 2000 for Form 1098–E: 9,661,965.

Estimated average annual burden hours per response for Form 1098–E: 3 minutes.

Comments concerning the accuracy of this burden and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to information reporting requirements under section 6050S. The Taxpayer Relief Act of 1997 (Public Law 105–34 (111 Stat. 788) (TRA '97)) added section 221 of the Internal Revenue Code (Code) to allow certain taxpayers who pay interest on qualified education loans to claim a Federal income tax deduction for their interest payments. In general, as enacted by TRA '97, a deduction is allowed for interest payments made during the first 60 months in which interest payments are required on a qualified education loan. However, no interest deduction is allowed for any interest paid before January 1, 1998. On January 21, 1999, the IRS issued proposed regulations (REG–116826–97) under section 221. *See* 64 FR 3257 (1999). Section 221 was amended by the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107–16 (115 Stat. 38)) to eliminate the limitation on the number of months during which interest paid on a qualified education loan is deductible, effective for interest paid after December 31, 2001, and to allow a deduction for voluntary payments of interest.

TRA '97 also added section 25A of the Code to provide the Hope Scholarship Credit and the Lifetime Learning Credit (education tax credit). In general, the education tax credit allows certain taxpayers who pay qualified tuition and related expenses to an eligible educational institution to claim a nonrefundable credit against their Federal income tax liability. On January 6, 1999, the IRS issued proposed regulations (REG–106388–01) under section 25A. See 64 FR 794 (1999).

In addition, TRA '97 added section 6050S of the Code. Section 6050S was amended by the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206 (112 Stat. 685) (RRA '98)) and Public Law 107–131 (115 Stat. 2410). In general, section 6050S requires certain payees who receive payments of interest on one or more qualified education loans to file information returns and to furnish written information statements to assist taxpayers and the IRS in determining any interest deduction allowable under section 221. In addition, section 6050S requires eligible educational institutions to file information returns and to furnish written information statements to assist taxpayers and the IRS in determining any education tax credit allowable under section 25A (as well as other tax benefits for higher education expenses). *See* H.R. Conf. Rept. No. 599, 105th Cong., 2d Sess., pp. 319–320 (1998). Similarly, section 6050S requires any person engaged in a trade or business of making payments to any individual under an insurance agreement as reimbursements or refunds of qualified tuition and related expenses to file information returns and to furnish written information statements.

Section 6050S(b) provides that the information return filed by payees who receive payments of interest on qualified education loans must contain: (1) The name, address, and taxpayer identification number (TIN) of the individual with respect to whom payments of interest on qualified education loans were received; (2) the aggregate amount of interest received for the calendar year from such individual; and (3) such other information as the Secretary may prescribe.

The IRS has published several notices describing the information reporting requirements for payees who receive interest on qualified education loans during the years 1998, 1999, 2000, and 2001. *See* Notice 98–7 (1998–3 I.R.B. 54), Notice 98–54 (1998–46 I.R.B. 25), Notice 99–37 (1999–30 I.R.B. 124), and Notice 2000–62 (2000–51 I.R.B. 587).

A notice of proposed rulemaking under section 6050S (REG–105316–98) was published in the **Federal Register** (65 FR 37728) on June 16, 2000, addressing the information reporting requirements for eligible educational institutions and insurers and payees who receive interest on qualified education loans. A public hearing was held on the proposed regulations on February 13, 2001. The IRS received written and electronic comments responding to the notice of proposed rulemaking.

The IRS and the Treasury Department have determined that the proposed regulations in § 1.6050S–1 addressing the information reporting requirements for eligible educational institutions and insurers should be withdrawn and that new proposed regulations should be issued. The IRS will issue proposed regulations in § 1.6050S–1 in a separate document. The proposed regulations in § 1.6050S–2 addressing the information reporting requirements for payees who receive payments of interest on qualified education loans are adopted as amended by this Treasury decision and redesignated as § 1.6050S–3. The comments received in connection with these regulations and the revisions are discussed in the ''Explanation of Provisions and Summary of Comments'' of this preamble.

Temporary regulations (66 FR 10191) and a notice of proposed rulemaking by cross reference (REG–107186–00) (66 FR 10247) under section 6050S were published in the **Federal Register** on February 14, 2001. Those regulations allow eligible educational institutions and payees who receive interest on qualified education loans to furnish information statements electronically to students and borrowers, respectively, if certain requirements are met. The temporary regulations for eligible educational institutions were designated as § 1.6050S–1T, and the temporary regulations for payees were designated as § 1.6050S–2T. The IRS and the Treasury Department have determined that those regulations should be finalized in a separate document. However, this Treasury decision redesignates § 1.6050S–1T and § 1.6050S–2T as § 1.6050S–2T and § 1.6050S–4T, respectively.

Explanation of Provisions and Summary of Comments

1. Information Reporting for Payments of Interest on Qualified Education Loans

The proposed regulations require any person engaged in a trade or business

that receives from any payor interest of $600 or more for any calendar year on one or more qualified education loans (as defined in section 221(e)(1) and the regulations thereunder) (a payee) to file a Form 1098-E, ''Student Loan Interest Statement,'' with the IRS. Under the proposed regulations, a payee must report the name, address, and taxpayer identification number (TIN) of the payee; the name, address, and TIN of the payor; and the aggregate amount of interest received during the calendar year from the payor. The final regulations retain these rules. As explained in the preamble to the proposed regulations, a payee may be the lender, the holder of the loan, or the loan servicer.

Consistent with TRA '97, the proposed regulations provide that a payee is required to report interest payments received on a qualified education loan during only the first 60 months in which interest payments are required on the loan. The Economic Growth and Tax Relief Reconciliation Act of 2001 repealed the limitation on the number of months during which interest paid on a qualified education loan is deductible, effective for interest paid after December 31, 2001. Therefore, the final regulations eliminate the 60-month reporting period, so that payees must continue to report annually interest payments on qualified education loans.

A. Section 221 Comments

The proposed regulations provide that, in determining the aggregate amount of interest payments to be reported by a payee, the term *interest* includes stated interest, loan origination fees (other than any fees for services), and capitalized interest as described in the regulations under section 221. Several commentators requested that other fees, such as insurance, be treated as deductible interest for purposes of section 221. In addition, several commentators requested clarification of, or changes to, the manner in which payments are allocated to interest, the definition of *qualified education loans*, and the ability to estimate capitalized interest. These comments were not considered in these regulations, which address only the information reporting requirements for interest payments on qualified education loans under section 221, but the comments will be considered in finalizing the regulations under section 221.

B. Reporting of Interest Received or Collected By One or More Persons

Section 6050S(f) requires that, in the case of any person who receives any amount on behalf of another person, only the first person receiving the amount is required to comply with the information reporting requirements. Based on section 6050S(f), the proposed regulations provide that if a payee contracts with another person to receive or collect interest payments on a qualified education loan on its behalf, the other person must comply with the information reporting requirements. Commentators requested clarification of how this rule would apply if a payee contracts with multiple parties, such as a billing service and a collection agent. Other commentators requested clarification of the rule for noncontractual arrangements and how the rule would apply if the person receiving the payments does not ordinarily possess the payor information required to file information returns (*e.g.*, a lock-box agent, a bankruptcy trustee, or a collection agency). The commentators suggested that the regulations provide that if a person collects or receives payments on a qualified loan on behalf of another person (whether or not a formal contract exists), the person collecting or receiving the payments must satisfy the reporting requirements, unless the other person does not possess the information needed to comply with the reporting requirements. This recommendation is consistent with the provisions of section 6050H and the regulations thereunder; therefore, the final regulations adopt this recommendation.

C. Forms 1098-E Filed by Third-Party

Several commentators requested that the final regulations permit a payee to contract with a third party to file Forms 1098-E, ''Student Loan Interest Statement,'' and to furnish the information statements. The general instructions to Form 1099 and Form 1098 allow a filing agent if certain requirements are met. Therefore, the final regulations do not need to adopt this recommendation.

D. Information Statement

Several commentators requested that the final regulations eliminate the requirement that a payee furnish certain instructions to a payor with the information statement. The commentators explained that the instructional language implies that the payee is able to provide tax assistance. The instructions that a payee is required to furnish with the information statement alert the payor to the limitations on the deductibility of reported interest. In addition, the instructions clearly state that the payor should refer to the IRS forms and publications for information regarding the deductibility of reported interest. Therefore, the final regulations do not eliminate the required instructions; however, the regulations clarify that the payor should refer to the IRS forms and publications, and not the payee, for tax information.

The proposed regulations provide that the information statement must include the name, address, and phone number of the individual who is the information contact for the payee that filed the Form 1098-E. It is often not feasible for payees to identify a specific individual as the information contact. Therefore, the final regulations provide that the information statement must include the name, address, and phone number of an office or department of the payee as the information contact.

E. Payment Adjustments After Returns Filed

Other commentators requested that the final regulations provide specific rules for reporting interest payment adjustments made after information returns have been filed with the IRS. The commentators stated that requiring reporting of adjustments to interest previously reported would be overly burdensome. The final regulations do not need to include specific rules because additional interest payments received in a subsequent year that relate to interest payments reported in a prior year are reportable in the year of receipt. Further, a payee is not required to report reimbursements or refunds of interest payments previously reported. However, a payee should file corrected information returns to report interest payments that were incorrectly reported in a prior year.

F. Effective Date of Regulations and Continuation of Notice 98–7 for the Calendar Year 2002

The proposed regulations provide that the regulations will apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2001. Several comments were received on the proposed effective date. Several commentators recommended that the final regulations apply to new loans made on or after January 1 of the year that is 24 months after publication of the final regulations and that loans made before that date remain subject to the requirements in Notice 98–7, as modified. Other comments requested a period of at least 12 months after publication of final regulations to make programming changes to implement required reporting with respect to loan origination fees and capitalized interest.

Further comments requested that the reporting requirements in Notice 98–7, as modified, continue for information returns required to be filed, and information statements required to be furnished, for interest payments received during calendar year 2002 (for which the returns and statements are required to be filed and furnished in 2003). In general, the final regulations do not impose any significant reporting requirement beyond the reporting currently required by Notice 98–7, as modified, and Form 1098–E. However, in response to comments, the IRS and the Treasury Department extend Notice 98–7, as modified, for the calendar year 2002. Therefore, the final regulations apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003 (for interest payments received during calendar year 2003). In addition, in order to provide additional time for payees to implement reporting of loan origination fees and capitalized interest, the final regulations provide that a payee is not required to report payments of such amounts as interest for qualified education loans made before January 1, 2004.

2. Requirement To File Information Returns on Magnetic Media

The final regulations amend the regulations under section 6011(e) to require payees who are required to file 250 or more Forms 1098–E to file on magnetic media.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. A final regulatory flexibility analysis has been prepared for the collection of information in this Treasury decision. This analysis is set forth in this preamble under the heading ''Final Regulatory Flexibility Analysis.'' Pursuant to section 7805(f), the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Final Regulatory Flexibility Analysis

The collection of information contained in § 1.6050S–3 is needed to assist the IRS and taxpayers in determining the amount of any interest deduction allowable under section 221. The objectives of these regulations are to provide uniform, practicable, and administrable rules under section 6050S. The types of small entities to which the regulations may apply are certain payees (e.g., a lender, a holder of the loan, or a loan servicer) who receive interest payments of $600 or more on qualified education loans.

There are no known Federal rules that duplicate, overlap, or conflict with these regulations. The regulations are considered to have the least economic impact on small entities of all alternatives considered.

Moreover, the regulations requiring filing Forms 1098–E on magnetic media impose no additional reporting or recordkeeping and only prescribe the method of filing information returns that are already required to be filed. Further, these regulations are consistent with the statutory requirement that a payee is not required to file Forms 1098–E on magnetic media unless required to file at least 250 or more returns during the year. Finally, the economic impact caused by requiring Forms 1098–E on magnetic media should be minimal because most payee's operations are computerized. Even if their operations are not computerized, the incremental cost of magnetic media reporting should be minimal in most cases because of the availability of computer service bureaus. In addition, the existing regulations under section 6011(e) provide that the IRS may waive the magnetic media filing requirements on a showing of hardship. The waiver authority will be exercised so as not to unduly burden payees lacking both the necessary data processing facilities and access at a reasonable cost to computer service bureaus.

Drafting Information

The principal author of the regulations is Donna Welch, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income tax, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment tax, Estate tax, Excise tax, Gift tax, Income tax, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAX

Paragraph 1. The authority citation for part 1 is amended by removing the entry for ''Section 1.6050S–1T'' and by adding entries in numerical order to read in part as follows:

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

Section 1.6050S–3 also issued under 26 U.S.C. 6050S(g).

Section 1.6050S–4T also issued under 26 U.S.C. 6050S(g). * * *

Par. 2. Sections 1.6050S–1T and 1.6050S–2T are redesignated as §§ 1.6050S–2T and 1.6050S–4T, respectively, and amended by revising the section headings to read as follows:

§ 1.6050S–2T Electronic furnishing of information statements for qualified tuition and related expenses (temporary).

* * * * *

§ 1.6050S–4T Electronic furnishing of information statements for payments of interest on qualified education loans (temporary).

* * * * *

Par. 3. Sections 1.6050S–0 and 1.6050S–3 are added to read as follows:

§ 1.6050S–0 Table of contents.

This section lists captions contained in section 6050S.

§ 1.6050S–2T Electronic furnishing of information statements for qualified tuition and related expenses.

(a) Electronic furnishing of statements.
(1) In general.
(2) Consent.
(i) In general.
(ii) Change in hardware or software requirements.
(iii) Example.
(3) Required disclosures.
(i) In general.
(ii) Paper statement.
(iii) Scope and duration of consent.
(iv) Post-consent request for a paper statement.
(v) Withdrawal of consent.
(vi) Notice of termination.
(vii) Updating information.
(viii) Hardware and software requirements.
(4) Format.
(5) Posting.
(6) Notice.
(i) In general.
(ii) Undeliverable electronic address.

(iii) Corrected statements.
(7) Retention.
(b) Effective date.

§ 1.6050S–3 Information reporting for payments of interest on qualified education loans.

(a) Information reporting requirement in general.
(b) Definitions.
(1) Interest.
(2) Payor.
(c) Requirement to file return.
(1) Form of return.
(2) Information included on return.
(3) Time and place for filing return.
(i) In general.
(ii) Extensions of time.
(4) Use of magnetic media.
(d) Requirement to furnish statement.
(1) In general.
(2) Time and manner for furnishing statement.
(i) In general.
(ii) Extensions of time.
(3) Copy of Form 1098–E.
(e) Special rules.
(1) Transitional rule for reporting of loan origination fees and capitalized interest.
(2) Qualified education loan certification.
(3) Payments of interest received or collected by one or more persons.
(i) In general.
(ii) Exception.
(4) Reporting by foreign persons.
(5) Governmental units.
(f) Penalty provisions.
(1) Failure to file correct returns.
(2) Failure to furnish correct information statements.
(3) Waiver of penalties for failures to include a correct TIN.
(i) In general.
(ii) Acting in a responsible manner.
(iii) Manner of soliciting TIN.
(4) Failure to furnish TIN.
(g) Effective date.

§ 1.6050S–4T Electronic furnishing of information statements for payments of interest on qualified education loans.

(a) Electronic furnishing of statements.
(1) In general.
(2) Consent.
(i) In general.
(ii) Change in hardware or software requirements.
(iii) Example.
(3) Required disclosures.
(i) In general.
(ii) Paper statement.
(iii) Scope and duration of consent.
(iv) Post-consent request for a paper statement.
(v) Withdrawal of consent.
(vi) Notice of termination.
(vii) Updating information.
(viii) Hardware and software requirements.
(4) Format.
(5) Posting.
(6) Notice.
(i) In general.
(ii) Undeliverable electronic address.
(iii) Corrected statements.
(7) Retention.
(b) Effective date.

§ 1.6050S–3 Information reporting for payments of interest on qualified education loans.

(a) *Information reporting requirement in general.* Except as otherwise provided in this section, any person engaged in a trade or business that, in the course of that trade or business, receives from any payor (as defined in paragraph (b)(2) of this section) interest payments that aggregate $600 or more for any calendar year on one or more qualified education loans (as defined in section 221(e)(1) and the regulations thereunder) (a payee) must—

(1) File an information return, as described in paragraph (c) of this section, with the Internal Revenue Service with respect to the payor; and

(2) Furnish a statement, as described in paragraph (d) of this section, to the payor.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *Interest. Interest* includes stated interest, loan origination fees (other than fees for services), and capitalized interest as described in the regulations under section 221. See paragraph (e)(1) of this section for a special transitional rule relating to reporting of loan origination fees and capitalized interest.

(2) *Payor. Payor* means the individual who is carried on the books and records of the payee as the borrower on a qualified education loan. If there are multiple borrowers, the principal borrower on the payee's books and records is treated as the payor for purposes of section 6050S and this section.

(c) *Requirement to file return*—(1) *Form of return.* A payee must file an information return for the payor on Form 1098–E, ''Student Loan Interest Statement.'' A payee may use a substitute for Form 1098–E if the substitute form complies with the applicable revenue procedures relating to substitute forms.

(2) *Information included on return.* A payee must include on Form 1098–E—

(i) The name, address, and taxpayer identification number (TIN) (as defined in section 7701(a)(41)) of the payee;

(ii) The name, address, and TIN of the payor;

(iii) The aggregate amount of interest payments received during the calendar year from the payor; and

(iv) Any other information required by Form 1098–E and its instructions.

(3) *Time and place for filing return*—(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, the Form 1098–E must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which interest payments were received. A payee must file Form 1098–E with the Internal Revenue Service according to the instructions to Form 1098–E.

(ii) *Extensions of time.* The Internal Revenue Service may grant a payee an extension of time to file returns required in this section upon a showing of good cause. See the instructions to Form 1098–E and applicable revenue procedures for rules relating to extensions of time to file.

(4) *Use of magnetic media.* See section 6011(e) and § 301.6011–2 of this chapter for rules relating to the requirement to file Forms 1098–E on magnetic media.

(d) *Requirement to furnish statement*—(1) *In general.* A payee must furnish a statement to each payor for whom it is required to file a Form 1098–E. The statement must include—

(i) The information required under paragraph (c)(2) of this section;

(ii) A legend that identifies the statement as important tax information that is being furnished to the Internal Revenue Service;

(iii) Instructions that—

(A) State that, under section 221 and the regulations thereunder, the payor may not be able to deduct the full amount of interest reported on the statement;

(B) In the case of qualified education loans made before January 1, 2004, for which the payee does not report payments of interest other than stated interest, state that the payor may be able to deduct additional amounts (such as certain loan origination fees and capitalized interest) not reported on the statement;

(C) State that the payor should refer to relevant Internal Revenue Service forms and publications, and should not refer to the payee, for explanations relating to the eligibility requirements for, and calculation of, any allowable deduction for interest paid on a qualified education loan; and

(D) Include the name, address, and phone number of the office or department of the payee that is the information contact for the payee that filed the Form 1098–E.

(2) *Time and manner for furnishing statement*—(i) *In general*. Except as provided in paragraph (d)(2)(ii) of this section, a payee must furnish the statement described in paragraph (d)(1) of this section to the payor on or before January 31 of the year following the calendar year in which payments of interest on a qualified education loan were received. If mailed, the statement must be sent to the payor's last known address. If furnished electronically, the statement must be furnished in accordance with the applicable regulations.

(ii) *Extensions of time*. The Internal Revenue Service may grant a payee an extension of time to furnish statements required in this section upon a showing of good cause. See the instructions to Form 1098–E and applicable revenue procedures for rules relating to extensions of time to furnish statements.

(3) *Copy of Form 1098–E*. A payee may satisfy the requirement of this paragraph (d) by furnishing either a copy of Form 1098–E and its instructions or another document that contains all the information filed with the Internal Revenue Service and the information required by paragraph (d)(1) of this section if the document complies with applicable revenue procedures relating to substitute statements.

(e) *Special rules*—(1) *Transitional rule for reporting of loan origination fees and capitalized interest*. For qualified education loans made before January 1, 2004, a payee is not required to report payments of loan origination fees and capitalized interest as interest under section 6050S and this section.

(2) *Qualified education loan certification*. If a loan is not subsidized, guaranteed, financed, or is not otherwise treated as a student loan under a program of the Federal, state, or local government or an eligible educational institution, a payee must request a certification from the payor that the loan will be used solely to pay for qualified higher education expenses. A payee may use Form W–9S, ''Request for Student's or Borrower's Social Security Number and Certification,'' to obtain the certification. A payee may establish an electronic system for payors to submit Forms W–9S electronically as described in applicable forms and instructions. A payee may also develop a separate form to obtain the payor certification or may incorporate the certification into other forms customarily used by the payee, such as loan applications, provided the certification is clearly set forth. If the certification is not received, the loan is not a qualified education loan for purposes of section 6050S and this section.

(3) *Payments of interest received or collected by one or more persons*—(i) *In general*. Except as otherwise provided in paragraph (e)(3)(ii) of this section, if a person collects or receives payments of interest on a qualified education loan on behalf of another person (e.g., a lender), the person collecting or receiving the interest must satisfy the information reporting requirements of this section. In this case, the reporting requirements do not apply to the transfer of interest to the other person.

(ii) *Exception*. If the person collecting or receiving payments of interest on a qualified education loan on behalf of another person (e.g., a lender) does not possess the information needed to comply with the information reporting requirements of this section, the other person must satisfy the information reporting requirements of this section.

(4) *Reporting by foreign persons*. A payee that is not a United States person (as defined in section 7701(a)(30)) must report payments of interest it receives on a qualified education loan only if it receives the payment—

(i) At a location in the United States; or

(ii) At a location outside the United States if the payee is—

(A) A controlled foreign corporation (within the meaning of section 957(a)); or

(B) A person 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of the taxable year preceding the taxable year in which interest payments were received (or for such part of the period as the person was in existence), was effectively connected with the conduct of a trade or business within the United States.

(5) *Governmental units*. A governmental unit, or an agency or instrumentality of a governmental unit, that receives from any payor interest payments that aggregate $600 or more for any calendar year on one or more qualified education loans is a payee, without regard to the requirement of paragraph (a) of this section that the interest be received in the course of a trade or business.

(f) *Penalty provisions*—(1) *Failure to file correct returns*. The section 6721 penalty may apply to a payee that fails to file information returns required by section 6050S and this section on or before the required filing date; that fails to include all of the required information on the return; or that includes incorrect information on the return. See section 6721, and the regulations thereunder, for rules relating to penalties for failure to file correct returns. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(2) *Failure to furnish correct information statements*. The section 6722 penalty may apply to a payee that fails to furnish statements required by section 6050S and this section on or before the prescribed date; that fails to include all the required information on the statement; or that includes incorrect information on the statement. See section 6722, and the regulations thereunder, for rules relating to penalties for failure to furnish correct statements. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(3) *Waiver of penalties for failures to include a correct TIN*—(i) *In general*. In the case of a failure to include a correct TIN on Form 1098–E or a related information statement, penalties may be waived if the failure is due to reasonable cause. Reasonable cause may be established if the failure arose from events beyond the payee's control, such as a failure of the payor to furnish a correct TIN. However, the payee must establish that it acted in a responsible manner both before and after the failure.

(ii) *Acting in a responsible manner*. A payee must request the TIN of each payor if it does not already have a record of the payor's correct TIN. If the payee does not have a record of the payor's correct TIN, then it must solicit the TIN in the manner described in paragraph (f)(3)(iii) of this section on or before December 31 of each year during which it receives payments of interest. If a payor refuses to provide his or her TIN upon request, the payee must file the return and furnish the statement required by this section without the payor's TIN, but with all other required information. The specific solicitation requirements of paragraph (f)(3)(iii) of this section apply in lieu of the solicitation requirements of § 301.6724–1(e) and (f) of this chapter for the purpose of determining whether a payee acted in a responsible manner in attempting to obtain a correct TIN. A payee that complies with the requirements of this paragraph (f)(3) will be considered to have acted in a responsible manner within the meaning of § 301.6724–1(d) of this chapter with respect to any failure to include the correct TIN of a payor on a return or statement required by section 6050S and this section.

(iii) *Manner of soliciting TIN*. A payee must request the payor's TIN in writing and must clearly notify the payor that

the law requires the payor to furnish a TIN so that it may be included on an information return filed by the payee. A request for a TIN made on Form W–9S, ''Request for Student's or Borrower's Social Security Number and Certification,'' satisfies the requirements of this paragraph (f)(3)(iii). A payee may establish a system for payors to submit Forms W–9S electronically as described in applicable forms and instructions. A payee may also develop a separate form to request the payor's TIN or incorporate the request into other forms customarily used by the payee, such as loan applications.

(4) *Failure to furnish TIN.* The section 6723 penalty may apply to any payor who is required (but fails) to furnish his or her TIN to a payee. See section 6723, and the regulations thereunder, for rules relating to the penalty for failure to furnish a TIN.

(g) *Effective date.* The rules in this section apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

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

Par. 5. Section 301.6011–2 is amended by:

1. Revising the first sentence of paragraph (b)(1).
2. Revising paragraph (g)(1).
3. Adding paragraph (g)(3).

The revisions and additions read as follows:

§ 301.6011–2 Required use of magnetic media.

* * * * *

(b) *Returns required on magnetic media.* (1) If the use of Form 1042–S, 1098, 1098–E, 1099 series, 5498, 8027, W–2G, or other form treated as a form specified in this paragraph (b)(1) is required by the applicable regulations or revenue procedures for the purpose of making an information return, the information required by the form must be submitted on magnetic media, except as otherwise provided in paragraph (c) of this section. * * *

* * * * *

(g) *Effective dates.* (1) Except as otherwise provided in paragraph (g)(2) or (3) of this section, this section applies to returns required to be filed after December 31, 1986.

* * * * *

(3) This section applies to returns on Form 1098–E required to be filed after December 31, 2003.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In § 602.101, paragraph (b) is amended by removing the entry for ''1.6050S–1T'', and adding two new entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6050S–3	1545–1678
1.6050S–4T	1545–1729
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: April 8, 2002.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 02–9931 Filed 4–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[COTP Honolulu 02–001]

RIN 2115–AA97

Anchorages and Security Zones; Oahu, Maui, HI, and Kauai, HI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing security zones in designated waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, HI for a period of six months. These security zones are necessary to protect personnel, vessels, and facilities from acts of sabotage, terrorist acts, other subversive acts, or other causes of a similar nature and will extend from the surface of the water to the ocean floor. Entry into these zones is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu, HI.

DATES: This section is effective from 6 a.m. HST April 19, 2002, until 4 p.m. HST October 19, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Marine Safety Office Honolulu, 433 Ala Moana Blvd., Honolulu, Hawaii 96813, between 7 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG E. G. Cantwell, Coast Guard Marine Safety Office Honolulu, Hawaii, at (808) 522–8260.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 20, 2002, we published a notice of proposed rulemaking (NPRM) entitled ''Anchorages and Security Zones; Oahu, Maui, Hawaii, and Kauai, HI'' in the **Federal Register** (67 FR 12938). We did not receive any letters commenting on the proposed rule. No public hearing was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less that 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest since immediate action is needed to protect persons, vessels, and facilities in various areas on the islands of Oahu, Maui, Hawaii, and Kauai, HI from acts of sabotage, terrorist attack, or other subversive acts. Under these circumstances, following the normal rulemaking procedures would be impracticable.

Background and Purpose

Recent terrorist incidents in New York and Washington, DC have called for the implementation of additional measures to protect national security interests. This rule is similar to a rule published January 31, 2002 (67 FR 4656), creating security zones in these areas until April 19, 2002. This rule is intended to provide for the safety and security of the public, maritime commerce, and transportation, by establishing security zones in designated harbors, anchorages, facilities, and adjacent navigable waters of the Unites States.

The zones provide the Captain of the Port Honolulu with the means to adequately respond to acts of sabotage, terrorist attack, and any other subversive acts. These security zones extend from the surface of the water to the ocean floor. Entry into these zones is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu.

Discussion of Comments and Changes

The Coast Guard did not receive any comments following our publication of the notice of proposed rulemaking (67 FR 12938, March 20, 2002). Therefore, we are adopting the proposed rule without changes.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the geographic zone sizes are the minimum necessary to adequately protect the public, maritime commerce, and transportation. Any vessel may request permission from the Captain of the Port to enter into or move within the zones. Any inconvenience experienced by persons or vessels will be brief and minimal in light of the measures necessary to protect the public, maritime commerce, and transportation from sabotage, terrorist attack, and other subversive acts.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. For the same reasons discussed under Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (see **ADDRESSES**-) explaining why you think it qualifies and how and to what degree this rule will economically affect it.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

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

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. From 6 a.m. April 19, 2002, until 4 p.m. October 19, 2002, in § 110.235, add a new paragraph (c) to read as follows:

§ 110.235 Pacific Ocean (Mamala Bay), Honolulu Harbor, Hawaii (Datum: NAD 83).

* * * * *

(c) Before entering in the anchorage grounds in this section you must first obtain permission from the Captain of the Port Honolulu.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

4. A new § 165.T14–069 is temporarily added to read as follows:

§ 165.T14–069 Security Zones; Oahu, Maui, Hawaii, and Kauai, HI.

(a) *Location.* The following areas are security zones:

(1) All waters of Honolulu Harbor and entrance channel, Keehi Lagoon, and General Anchorages A, B, C, and D as defined in 33 CFR 110.235 that are shoreward of the following coordinates: The shoreline at 21°17.68′ N, 157°52.0′ W; thence due south to 21°16.0′ N, 157°52.0′ W, thence due west to 21°16.0′ N, 157°55.58′ W, thence due north to Honolulu International Airport Reef Runway at 21°18.25′ N, 157°55.58′ W.

(2) The waters around the Tesoro Single Point Mooring extending 1,000 yards in all directions from position 21°16.2′ N, 158°05.3′ W.

(3) The waters extending 1,000 yards in all directions around vessels moored at the Chevron Conventional Buoy Mooring at approximate position 21°16.7′ N, 158°04.2′ W.

(4) The Kahului Harbor and Entrance Channel, Maui, HI consisting of all waters shoreward of the COLREGS DEMARCATION line. (See 33 CFR 80.1460).

(5) All waters within the Nawiliwili Harbor, Kauai, HI shoreward of the COLREGS DEMARCATION line (See 33 CFR 80.1450).

(6) All waters of Port Allen Harbor, Kauai, HI shoreward of the COLREGS DEMARCATION line (See 33 CFR 80.1440).

(7) Hilo Harbor and Entrance Channel, Hawaii, HI consisting of all waters shoreward of the COLREGS DEMARCATION line (See 33 CFR 80.1480).

(8) The waters extending out 500 yards in all directions from cruise ship vessels anchored within 3 miles of:

(i) Lahaina Small Boat Harbor, Maui, between Makila Point and Puunoa Point.

(ii) Kailua-Kona Small Boat Harbor, Hawaii, between Keahulolu Point and Puapuaa Point.

(9) All waters contained within the Barbers Point Harbor, Oahu, enclosed by a line drawn between Harbor Entrance Channel Light 6 and the jetty point day beacon at 21°19.5′ N, 158°07.3′ W.

(b) *Designated representative:* A designated representative of the Captain of the Port is any Coast Guard commissioned officer, warrant or petty officer that has been authorized by the Captain of the Port Honolulu to act on his behalf. The following officers have or will be designated by the Captain of the Port Honolulu: The senior Coast Guard boarding officer on each vessel enforcing the security zone.

(c) *Regulations.* (1) In accordance with § 165.33, entry into these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his designated representatives. Section 165.33 also contains other general requirements.

(2) The existence or status of the temporary security zones in this section will be announced periodically by Broadcast Notice to Mariners.

(3) Persons desiring to transit the areas of the security zones may contact the Captain of the Port at command center telephone number (808) 541–2477 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his designated representatives.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section is 33 U.S.C. 1226; 49 CFR 1.46.

(e) *Effective dates.* This section is effective from 6 a.m. HST April 19, 2002, until 4 p.m. HST October 19, 2002.

Dated: April 17, 2002.

R.D. Utley,

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

[FR Doc. 02–10470 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–227]

RIN 2115–AA97

Safety and Security Zones; High Interest Vessels—Boston Harbor, Weymouth Fore River, and Salem Harbor, MA

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request from comments.

SUMMARY: The Coast Guard is establishing interim safety and security zones for vessels determined to be in need of a Coast Guard escort by the Captain of the Port (COTP), Boston. The safety and security zones for these escorted vessels will close all waters of Boston Harbor 1000 yards ahead and astern, and 100 yards on each side of an escorted vessel in transit. These safety and security zones are needed to safeguard the vessels, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature. The zones will prohibit entry into or movement within this portion of the COTP Boston zone without COTP authorization.

DATES: This interim rule becomes effective May 29, 2002. Comments and related materials regarding this interim rule must reach the Coast Guard by June 28, 2002.

ADDRESSES: Documents as indicated in this preamble are part of docket CGD01–01–227 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dave Sherry, Marine Safety Office Boston, Maritime Security Operations Division, at (617) 223–3030.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–01–227), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like

to know your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this interim rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Regulatory History

A notice of proposed rulemaking (NPRM) was published on January 18, 2002 in the **Federal Register** (67 FR 2614). The comment period in that NPRM expired February 28, 2002. The Coast Guard is now proceeding to implement the proposal with changes on an interim basis, allowing for further public comment until June 28, 2002 for consideration in development of the final rule.

Background and Purpose

The September 11, 2001 terrorist attacks on New York City and Washington, DC inflicted catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. Due to these heightened security concerns, safety and security zones are prudent for vessels that may be likely targets of terrorist acts. This interim rule establishes safety and security zones for vessels the Captain of the Port (COTP) Boston determines are in need of a Coast Guard escort (''Escorted Vessels'' or ''EVs'').

Discussion of Interim Rule

The safety and security zones would prohibit entry into or movement in all waters 1000 yards ahead or astern, and 100 yards on each side of any EV in the following waters of the Boston Captain of the Port Zone: All waters of Boston Inner Harbor, including the waters of the Mystic River, Chelsea River, and Reserved Channel west of a line running from Deer Island Light, at position 42°20′25″ N, 070°57′15″ W, to Long Island, at position 42°19′48″ N, 070°57′15″ W, and west of the Long Island Bridge, running from Long Island to Moon Head. For the purposes of this rule, EVs operating in Boston Harbor include any vessel (as defined under 46 U.S.C. section 2101) deemed to be in need of an escort due to increased security risks present and identified by the COTP under the circumstances.

Whether a vessel is considered an EV is determined by the Captain of the Port Boston based on the potential threat posed by the vessel (or cargo aboard) to the safety and/or security to the maritime community, the crews or passengers of the EVs, and the surrounding communities from subversive or terrorist attack.

The safety and security zones are necessary to protect the EVs, their crews and/or passengers, others in the maritime community, and the surrounding local communities from subversive or terrorist attack against a vessel which could, by the nature of its cargo or the destructive capability of the vessel structure itself, potentially inflict a large number of casualties or otherwise have a serious negative impact on vessels, the port, or the environment. Since large commercial vessels fall into the description above, it is expected that the vast majority of vessels this rule is used to protect will be large commercial vessels restricted to the Boston ship channel.

The COTP Boston anticipates some impact on vessel traffic due to this regulation. However, as discussed in the Regulatory Evaluation section below, the impact is anticipated to be minimal. In addition, the safety and security zones are deemed necessary for the protection of life and property within the COTP Boston zone. Public notifications will be made prior to the effective period of this regulation via local notice to mariners. Marine information broadcasts will be utilized to notify the public of EV transits.

No person or vessel may enter or remain in a prescribed safety or security zone at any time without the permission of the COTP. Each person or vessel in a safety or security zone shall obey any direction or order of the COTP or Coast Guard representative on scene. The COTP may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the COTP.

Any violation of any safety or security zone herein is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions. This regulation is under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

Discussion of Comments and Changes Implemented in the Interim Final Rule

The Coast Guard received 22 comments from the public regarding this proposal. All comments received were considered in the development of this interim final rule (IFR). Some changes implemented in the IFR are a result of inter-Coast Guard evaluations of how to better employ and enforce the regulation. A significant number of the changes are the result of comments and recommendations of stakeholders in the COTP Boston zone. These stakeholders include maritime industry, marina operators, the maritime law community, recreational boaters, the Massachusetts Port Authority, and the commercial fishing industry. The comments and respective changes (if any) are addressed below.

I. The Definition of What Type of Vessel (''High Interest Vessel'') This Regulation Applies to Is Unclear

The original proposed safety and security zones published in the **Federal Register** (67 FR 2614, January 18, 2002) were developed to protect High Interest Vessels (HIVs). Since that time the definition of HIVs for the purposes of Coast Guard maritime security operations and this regulation have diverged. As a result, vessels in need of protection under this regulation have been termed ''Escorted Vessels.'' Additionally, in the proposal we provided examples of cargoes and vessel types that might be considered HIVs. The list was not exclusive, but was meant to provide examples of the types of vessels which may be considered high risk. These examples were not essential to the regulation and created some confusion among the public. As a result they have been removed, since the intent of the regulation is to allow the COTP the flexibility to protect any vessel found to be in need of such protection.

II. The Term Vessel at Anchor Is Not Clearly Defined

Many comments stated concerns with the potential application of these safety and security zones to vessels at anchor. Some comments thought this would make the regulation applicable to moored vessels as well. It was determined that vessels to which this regulation would apply would not be allowed to anchor within Boston Harbor, and in fact would be required to anchor in Broad Sound well offshore of Boston Harbor if they anchored at all. In

addition, the regulation was originally designed to fill a need to protect and provide escorts for moving vessels. As a result, all references to anchored vessels have been removed from the proposal.

III. EVs Entering the Weymouth Fore River and Salem Harbor Would Force Other Vessels Onto Shoals To Move Out of the Way. Enforcement in the Narrow Fore River Channel Would Be Near Impossible

Many comments raised concerns with EVs transiting the narrow channels and harbors of Salem and Weymouth. These comments raised concerns that other vessels located in the channels would have insufficient room to maneuver out of the way of an oncoming EV and associated safety and security zones. Due to the infrequent nature of commercial vessel transits in these two areas, coupled with the highly infrequent nature of the COTP designating EVs, we have determined that benefits of this regulation do not outweigh the enforcement complications of these safety and security zones in these areas. As a result this rule will only be effective in Boston Harbor, and will not be effective in Salem Harbor and the Weymouth Fore River, as originally proposed. Should the need arise, the Coast Guard will enact temporary regulations to protect vessels in these areas.

IV. An EV May Have the Potential To ''Freeze'' the Charles River Locks

Some comments presented concerns with the moving safety and security zones having an impact on recreational vessels attempting to transit the Charles River Dam during an EV transit. This regulation will be used to protect vessels deemed to be in need of escort protection by the COTP Boston. If the COTP needed to protect a vessel transiting in the vicinity of the Charles River Dam, other vessels would have to wait for the EV to pass or request permission to transit in its vicinity. However, it is expected that the vast majority of such vessels will be large commercial vessels restricted to the Boston Ship Channel. In this case we have determined that the zones are not large enough to extend from the main ship channel to the Charles River Dam.

V. All Vessel Traffic Would Have To ''Freeze'' in Place as Soon as an EV Enters the Harbor

Some comments raised concerns that as soon as an EV entered the Boston Harbor, all vessels would have to ''freeze'' in place. Traditionally, the Coast Guard grants access to vessels wishing to transit through a safety and security zone as long as the vessel does not pose a safety or security risk to the commercial vessel in transit, and would plan to do the same with this regulation. However, to further aid enforcement and the public we have determined that reducing the zone from 200 to 100 yards on each side of an EV will provide adequate protection for EVs and at the same time reduce the number of requests to the Coast Guard representative on scene from vessels wishing to enter the moving zones, easing the enforcement burden on escorting assets and allowing more space to navigate outside the zones.

VI. Is It Possible To Regulate the Transit Times of EVs To Benefit the Boating Community?

Some comments stated a desire to regulate the arrival and departure times of EVs around periods of high recreational boating activity. We have determined this is not practical. Large commercial vessels are dependant upon many (sometimes unpredictable) variables including tidal schedules, quantities of cargo at marine facilities, and the arrivals and departures of other vessels, making the management of their arrivals highly difficult to accomplish. Attempting to manage their transits in this manner would cause undue burden on marine industry and negative impacts upon the flow of commerce.

VII. Will This Regulation Economically Impact Marinas?

Some comments stated concerns that this regulation would impact marinas by forcing tenants to vacate their moorings and slips each time an EV moving zone passed over their marina. The COTP does not intend to force stationary moored boats to move each time an EV safety and security zone passes over them, and will not do so unless a security risk is identified at that marina. In this case the Coast Guard would only remove the boat or person deemed to be a security risk. The spirit of the regulation is to prevent vessels from approaching the EV inside the zone without Coast Guard permission.

VIII. Will This Regulation Impact the Normal Business of Those on Piers, Wharves, Marinas Who Are Not Operating Vessels?

Some comments expressed concerns over how the moving EV zone would impact harbor dock workers and waterfront facilities. Again, the Coast Guard does not intend to interfere with events occurring in stationary locations (as with the marinas) unless a specific security risk is identified on shore. In this case the Coast Guard would address only that specific risk.

IX. What Public Outreach Efforts Will the Coast Guard Pursue To Educate the Public Boating Community With Regards to This Regulation?

Some comments relayed interest in how the Coast Guard plans to inform the public of the specifics of this regulation. The Coast Guard plans to conduct a public outreach program through the local Port Operators Group, yacht club meetings, pamphlet distribution to mariners and industry utilizing the Coast Guard Auxiliary, Local Notice to Mariners, and safety marine information broadcasts.

X. How Will This Regulation Impact Local Lobster Fishermen?

Some comments stated concerns over how this regulation would impact the placement of lobster traps. The Captain of the Port anticipates minimal impact on lobstermen as with all other waterway users. Since the safety and security zones are moving, the lobstermen may simply wait the short time it takes for the vessel to pass or request to pass through the zone from the Coast Guard representative on scene.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation will prevent traffic from moving within a portion of Boston Harbor during EV transits, the effect of this regulation will not be significant due to the minimal time that vessels will be restricted from the area. Further, vessels can pass safely around the zones at most points in the Harbor, vessels will only have to wait a short time for the EV to pass if they cannot safely pass outside the zones, and advance notifications will be made to the local maritime community by marine information broadcasts.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This interim rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Boston Harbor during EV transits. This rule will not have a significant economic impact on a substantial number of small entities due to the following factors: (1) The minimal time that vessels will be restricted from the area of the zones, (2) vessels can pass safely around the zones at most points in Boston Harbor, (3) vessels will only have to wait a short time for the EV to pass if they cannot safely pass outside the zones, (4) and advance notifications will be made to the local maritime community by marine information broadcasts. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this interim rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this interim rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Dave Sherry at the address listed under **ADDRESSES.**

Collection of Information

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

Federalism

The Coast Guard has analyzed this interim rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This interim rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Environment

The Coast Guard has considered the environmental impact of this interim rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.114 to read as follows:

§ 165.114 Safety and Security Zones: Escorted Vessels—Boston Harbor, Massachusetts.

(a) *Location.* The following waters within the Boston Captain of the Port Zone, 1000 yards ahead and astern, and 100 yards on each side of any designated escorted vessel, are established as safety and security zones: All waters of Boston Inner Harbor, including the waters of the Mystic River, Chelsea River, and Reserved Channel west of a line running from Deer Island Light, at position 42°20′25″ N, 070°57′15″ W, to Long Island, at position 42°19′48″ N, 070°57′15″ W, and west of the Long Island Bridge, running from Long Island to Moon Head.

(b) *Escorted vessels defined.* For the purposes of this section, escorted vessels operating in Boston Harbor include the following: Any vessels deemed to be in need of escort protection by the Captain of the Port, Boston for security reasons or under other circumstances.

(c) *Regulations.*

(1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: April 12, 2002.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–10407 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 02–009]

RIN 2115–AA97

Safety Zone; California and Arizona Border on the Colorado River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Colorado River between California and Arizona. This safety zone will be established to close a portion of the Colorado River for an exercise conducted by the United States Marine Corps. Persons and vessels will be restricted from entering into, transiting through, or anchoring within this safety zone, unless authorized by the Captain of the Port, the Imperial County Sheriff or the La Paz County Sheriff.

DATES: This rule is effective from 6 a.m. (MST) April 18 through 6 p.m. May 1, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 02–009] and are available for inspection or copying at Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, CA 92101–1064.between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. Publishing an NPRM would be contrary to public policy because immediate action is needed to protect mariners from potential hazards associated with the Marine Corps' exercises. The final schedule for this event was not finalized and communicated to the Coast Guard in sufficient time to allow for a comment period.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Information regarding the precise location and other logistical details surrounding the event were not provided until a date fewer than 30 days before the event. Delaying the effective date of this rule would be contrary to the public interest and would not allow the Coast Guard to aid in maintaining the safety of the exercise participants and users of the waterway.

Background and Purpose

This safety zone is necessary to close a portion of a navigable waterway for an exercise conducted by the U.S. Marine Corps on the Colorado River between Yuma, Arizona and Blythe, California. This event will take place April 18–19, 22–26, 29–30, 2002 and May 1, 2002 from 6 a.m. to 6 p.m. (MST). This exercise will include the placement of a temporary bridge linking the California side to the Arizona side of the river, the transportation of military equipment, and the movement of Marine Corps personnel.

The safety zone includes a 400-yard radius around the following coordinate: 33°22′49″ N and 114°42′22″ W. The closure of this section of the Colorado River is necessary to prevent vessel traffic from transiting near the Marine Corps exercise and transiting under the temporary bridge. This temporary safety zone is also necessary to provide for the safety of the Marine Corps personnel, military equipment, and the temporary bridge and also to protect other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his representative.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The exercise will be located in Cibola National Wildlife Refuge, which should not affect any small entities, and the Coast Guard is unfamiliar with any commercial vessel traffic that transits through this section of the Colorado River.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year.

Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. From 6 a.m. April 18, 2002 through 6 p.m. May 1, 2002, add new § 165.T11–041 to read as follows:

§ 165.T11–041 Safety Zone: Colorado River between Yuma, Arizona and Blythe, California.

(a) *Location.* The safety zone consists of the navigable waters of the Colorado River, between Yuma, Arizona and Blythe, California, enclosed by a 400-yard radius of the following coordinate: 33°22′49″ N and 114°42′22″ W.

(b) *Effective Dates.* This safety zone will be enforced from 6 a.m. to 6 p.m. (MST) on the following dates: April 18 through 19, April 22 through 26, April 29 through 30, 2002 and May 1, 2002. If the event concludes prior to the scheduled termination time, the United States Marine Corps, La Paz County Sheriff or Imperial County Sheriff will cease enforcement of this safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander, Captain Callanan, USMC, who may be contacted via cell phone at (909) 763–0066.

Dated: April 9, 2002.

S.P. Metruck,

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

[FR Doc. 02–10469 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 26

[WT Docket No. 00–32; FCC 02–47]

The 4.9 GHz Band Transferred From Federal Government Use

AGENCY: Federal Communications Commission.

ACTION: Final rule; delay of effective date.

SUMMARY: This document delays the effective date of the Second Report and Order, published April 9, 2002, (67 FR 17009) from May 9, 2002 to May 13, 2002. The Second Report and Order allocated 50 megahertz of spectrum in the 4940–4990 band (4.9 GHz band) for fixed and mobile services (except aeronautical mobile service) and designated this band for use in support of public safety. Due to unforeseen delays in the **Federal Register** publication of a final action that also revised page 55 of the Table of Frequency Allocations, 47 CFR 2.106, the Commission has determined that the effective date of the Second Report and Order must be delayed from May 9, 2002 to May 13, 2002. This action will allow page 55 to be printed in the correct sequence.

DATES: The effective date for the Second Report and Order amending 47 CFR parts 2 and 26, published April 9, 2002, 67 FR 17009, is delayed until May 13, 2002.

FOR FURTHER INFORMATION CONTACT: Genevieve Augustin, Esq., *guagusti@fcc.gov*, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680.

SUPPLEMENTARY INFORMATION: The Commission adopted a *Second Report and Order*, WT Docket No. 00–32, FCC 02–47, on February 14, 2002, and released on February 27, 2002. An effective date of May 9, 2002, was set by the Commission, 67 FR 17009, April 9, 2002. The Second Report and Order allocated 50 megahertz of spectrum in the 4940–4990 MHz band (4.9 GHz band) for fixed and mobile services (except aeronautical mobile service) and designates this band for use in support of public safety. The allocation and designation provide Public safety users with additional spectrum to support new broadband applications. This document delays that effective date from May 9, 2002, until May 13, 2002.

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 26

Communications common carriers, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–10475 Filed 4–26–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010823213–2078–02; I.D. 071701C]

RIN 0648-AK70

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 54 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, Amendment 54 to the FMP for Groundfish of the Gulf of Alaska (Amendments 54/54), and an amendment to the Pacific halibut commercial fishery regulations for waters in and off Alaska. These amendments make three changes in the Individual Fishing Quota (IFQ) Program to: (1) Allow a quota share (QS) holder's indirect ownership or affiliation to a vessel, through corporate or other collective ties, to substitute for vessel ownership in the QS holder's own name for purposes of hiring a skipper to fish the QS holder's IFQ; (2) revise the definition of ''a change in the corporation or partnership'' to include language that explicitly specifies the point at which estates holding initial allocations of QS must transfer the QS to a qualified individual; and (3) revise sablefish use limits to be expressed in QS units rather than as percentages of the QS pool. This action is intended to improve the effectiveness of the IFQ Program and is necessary to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to the IFQ fisheries.

DATES: DATES: Effective May 29, 2002.

ADDRESSES: Copies of Amendments 54/54, the Regulatory Impact Review and the Initial Regulatory Flexibility Analysis (IRFA), and Final Regulatory Flexibility Analysis (FRFA) prepared for this final rule may be obtained from Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel-Duvall.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or email at glenn.merrill@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The IFQ Program, a limited access management system for the fixed gear Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries off Alaska, was approved by NMFS in January 1993, and fully implemented beginning in March 1995. The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding QS in specific management regions. The IFQ Program for the sablefish fishery is implemented by the FMPs and Federal regulations under authority of the Magnuson-Stevens Act. The IFQ Program for the halibut fishery is implemented by Federal regulations under the authority of the Halibut Act.

A detailed discussion providing specific examples of the effect of this final rule on the IFQ Program may be found in the preamble to the proposed rule, published October 12, 2001 (66 FR 52090).

Indirect Vessel Ownership

The IFQ Program contains a number of provisions designed to promote an owner-operator IFQ fishing fleet. An exception to the owner-operator provisions allows initial recipients of category B, C, or D (catcher vessel) QS (hereafter QS holder) to hire a skipper to fish the IFQ derived from the QS, provided the QS holder owns at least 20 percent of the vessel on which the IFQ is being used to fish for IFQ species. This final rule will allow a QS holder to substitute indirect ownership of a vessel through corporate or other ties for direct vessel ownership by the QS holder for purposes of hiring a skipper to fish the QS holder's IFQ. This final rule also will allow corporate QS holders to employ a hired skipper on a vessel owned by a shareholder in the corporation. The purpose of this action is to revise IFQ Program regulations to explicitly reflect management practices that have been in effect since the IFQ Program started in 1995.

This final rule allows a QS holder to continue to hire a skipper through a corporation or partnership provided that certain minimum levels of vessel ownership are maintained by an individual QS holder who is a shareholder in a corporation or a partner in a partnership. Existing regulations require an individual QS holder to maintain a minimum of 20-percent ownership interest in the vessel (see 64 FR 24960, May 10, 1999). These regulations prevent a QS holder from employing a hired skipper unless the QS holder directly owns at least 20 percent of the vessel on which the hired skipper will fish the QS holder's IFQ.

This final rule extends the 20-percent ownership standard to QS holders who indirectly own a vessel through a corporation, partnership, or other entity. For example, a QS holder who is a shareholder in a corporation will be allowed to employ a hired skipper to fish his or her IFQ aboard a vessel wholly owned by that corporation provided that the QS holder had at least 20- percent ownership in the corporation that owns the vessel. This means a QS holder can meet the 20-percent minimum ownership standard indirectly as a shareholder of a corporation, a partner in a partnership, or a member of another entity. However, this final rule prevents a QS holder from employing hired skippers through corporations in which they are nominal shareholders.

Minimum ownership interest is determined by multiplying the percentage of ownership that a QS holder has in a corporation, partnership, or other entity by the percentage of ownership that a corporation, partnership, or other entity has in the vessel on which a hired skipper is employed. This final rule codifies the existing management policy and methodology currently used by NMFS to determine the ownership interest a QS holder has in a vessel. The following are two examples of how this final rule will be implemented:

Example 1: A QS holder owns 20 percent of a corporation and that corporation wholly owns a vessel. That QS holder would be allowed to employ a hired skipper aboard the vessel owned by the corporation because 20-percent ownership interest in the corporation multiplied by a 100- percent corporate ownership in the vessel equals a 20-percent ownership interest by the QS holder in the vessel. (0.2 X 1.0 = 0.2 or 20 percent)

Example 2: A QS holder owns 50 percent of a corporation and that corporation owns 30 percent of a vessel. That QS holder would

not be allowed to employ a hired skipper aboard the vessel owned by the corporation because 50-percent ownership interest in the corporation multiplied by a 30-percent corporate ownership in the vessel equals a 15-percent ownership interest by the QS holder in the vessel. (0.5 X 0.3 = 0.15 or 15 percent)

This final rule holds individual QS holders who are indirect corporate vessel owners to the same ownership standards as those required of direct individual vessel owners. This will allow existing business practices to continue since many QS holders own their vessels through a corporation to minimize personal liability. Without this final rule, QS holders would be unable to meet minimum standards for direct vessel ownership while maintaining the advantages that corporate vessel ownership provides.

Likewise, this final rule allows corporations, partnerships, or other entities that are QS holders to employ a hired skipper on board a vessel owned by a shareholder. This final rule requires the corporate QS holder to maintain certain minimum levels of interest, or affiliation, with the vessel on which a hired skipper is employed. However, this final rule does not require the corporate QS holder to maintain an ownership interest in the shareholder's vessel.

Minimum interest, or affiliation, is determined by multiplying the percentage of ownership that a person has in a corporation, partnership, or other entity by the percentage of ownership that person has in the vessel on which a hired skipper is employed. Again, this final rule codifies the existing management policy and methodology used by NMFS for this situation. The following are two examples of how this final rule will be implemented:

Example 1: A corporation is a QS holder. A shareholder owns 50 percent of that corporation and that shareholder owns 50 percent of a vessel. The corporate QS holder would be allowed to employ a hired skipper aboard the vessel owned by the shareholder because 50 percent interest in the corporation by the shareholder multiplied by a 50-percent ownership in the vessel by the shareholder equals a 25-percent interest, or affiliation, by the corporate QS holder in the shareholder's vessel. (0.5 X 0.5 = 0.25 or 25 percent)

Example 2: A corporation is a QS holder. A shareholder owns 80 percent of that corporation and that shareholder owns 10 percent of a vessel. The corporate QS holder would not be allowed to employ a hired skipper aboard the vessel owned by the shareholder because 80-percent interest in the corporation by the shareholder multiplied by a 10-percent ownership in the vessel by the shareholder equals an 8-percent interest, or affiliation, by the corporate QS holder in the shareholder's vessel. (0.8 X 0.1 = 0.08 or 8 percent)

Revising the Definition of a Change in Corporation or Partnership

To prevent excessive consolidation of QS and promote an owner-operator IFQ fleet, the IFQ Program restricts the extent to which corporations, partnerships, and other collective entities can hold catcher vessel QS. The regulations pertaining to collective QS holdings provide that any ''change'' in a corporation, partnership, or other entity, will cause the QS to cease generating annual IFQ for harvesting IFQ halibut or sablefish until the QS is transferred to a qualified individual (see 50 CFR 679.42(j)). The regulations define a ''change'' in a corporation, partnership, or other collective entity to mean the addition of a shareholder or partner to the collective entity. By defining such a ''change,'' the Council clearly expressed its intent to limit the ability of collective entities to hold catcher vessel QS and use indefinitely the resulting IFQ.

This final rule revises the definition of ''a change in the corporation or partnership'' to state that for estates holding QS, a ''change'' occurs with the final or summary distribution of the estate. The effective date of that change is the date of determination of a legal heir, if the previous QS holder died intestate, or the date of the order for distribution of the estate, if the previous QS holder had testamentary documents. Under this final rule, the estate is required to transfer any estate-held QS to a qualified individual upon a change in the estate. This final rule limits the ability of estates to hold QS and fish the resulting IFQ indefinitely and thereby meets the intent of the IFQ Program and the Council to maintain an owner-operator fleet in the fixed gear fisheries for Pacific halibut and sablefish.

Sablefish Use Limits

The IFQ Program limits the amount of QS a person may use to harvest IFQ species. In the original implementing regulations for the IFQ Program (58 FR 59375, November 9, 1993), use limits are expressed as percentages of the QS pool. The total amount of QS is used as a basis for the annual determination of IFQ for each QS holder. Because the size of the QS pool may vary from year to year, a use limit expressed as a percentage of the QS pool results in a variable use limit. Consequently, a fisherman's QS holdings that have reached the limit in one year may actually exceed the limit in a subsequent year without the fisherman having acquired any additional QS. In 1997, all halibut use limits were revised to be expressed in numbers of QS units based on the 1996 QS pool (62 FR 7947, February 21, 1997). The revised halibut use limits provide a fixed limit that does not change according to the size of the QS pool.

This final rule standardizes the application of use limits for halibut and sablefish. This provides sablefish QS holders with the same benefit of a stable use limit so that they can manage their fishing businesses in a more rational manner. This final rule revises the sablefish use limit percentages to 3,229,721 units of sablefish QS, and the IFQ regulatory area SE sablefish use limit percentages to 688,485 units of sablefish QS.

This final rule does not change the amount of QS that a person could use. It simply sets those limits in QS units, instead of as a percentage of the QS pool.

Changes From the Proposed Rule

NMFS invited public comment on the proposed rule implementing Amendments 54/54 from October 12, 2001, through November 26, 2001 (66 FR 52090, October 12, 2001). No comments were received.

During the course of preparing this final rule, several corrections were made to the final rule to better reflect the original intent of Amendments 54/54. The changes made in this final rule correctly reflect the intent of the Council and previous regulatory action approved by NMFS. These changes also reflect the current management practices used by NMFS when determining the level of indirect ownership or corporate affiliation that must exist between the QS holder and the vessel on which a hired skipper is employed. These changes correct the mathematical methodology used to determine the level of indirect ownership or affiliation and do not affect the nature of the proposed rule or the intent of the Council.

The first change in the final rule regulatory language concerns the determination of ownership interest for purposes of meeting the 20-percent minimum ownership interest requirement. The regulatory language in the proposed rule (66 FR 52090, October 12, 2001) for 50 CFR 679.42(i)(3) did not adhere to the Council's intent to require that initial recipients of category B, C, or D quota share must maintain a minimum of a 20-percent ownership interest in the vessel that employs a hired skipper. The proposed rule regulatory language did not use a multiplicative approach for purposes of determining the level of indirect

ownership. Currently, NMFS uses a multiplicative rule for determining the level of interest or corporate affiliation that must exist between the QS holder and the vessel on which a hired skipper is employed. The final rule language has been changed to adhere to the existing management practices that Amendments 54/54 were intended to codify.

The second change in the final rule regulatory language changes the numbering of a new paragraph at 50 CFR 679.42(j)(6) to 50 CFR 679.42(j)(7). The Code of Federal Regulations was amended recently to include a paragraph (j)(6), and the new paragraph in the final rule is added at (j)(7) of § 679.42.

The third change in the final rule regulatory language concerns the use of a hired skipper aboard a vessel that is owned by an individual that has an affiliation with a corporate QS holder through membership in a corporation, partnership, or other entity. The regulatory language in the proposed rule (66 FR 52090, October 12, 2001) for 50 CFR 679.42(j)(6) (now (j)(7)) did not adhere to the Council's intent to require that initial recipients of category B, C, or D QS must maintain a minimum 20-percent interest in the vessel before those initial QS recipients could hire a skipper to fish their IFQ on that vessel. The proposed rule regulatory language did not use a multiplicative approach for purposes of determining the level of indirect ownership. Currently, NMFS uses a multiplicative rule for determining the level of interest or corporate affiliation that must exist between the QS holder and the vessel on which a hired skipper is employed. The final rule language has been changed to adhere to the existing management practices that Amendments 54/54 were intended to codify.

The fourth change clarifies that the effective date of a change for purposes of transferring estate-held QS to a qualified individual includes situations when a person dies intestate (date of determination of a legal heir) and when a person dies with testamentary documents (date of the order for distribution of the estate). Regulatory text was added to § 679.42(j)(3) to reflect that clarification.

All the changes in the regulatory language from the proposed rule are consistent with Council intent. Failing to make these changes would frustrate Council intent to maintain an owner-operator component to the IFQ fishery and maintain more than a nominal relationship between the QS holder and the vessel on which a hired skipper is employed. These changes are corrections to the regulatory language describing the methodology used to determine interest in a vessel. These clarifications do not represent new policy and are necessary to reflect the current management practices used by NMFS to determine the level of indirect ownership or corporate affiliation that must exist between the QS holder and the vessel on which a hired skipper is employed.

Classification

The Administrator, Alaska Region, NMFS, has determined that these FMP amendments for sablefish and regulatory amendments for Pacific halibut are necessary for the conservation and management of the Pacific halibut and sablefish fixed-gear IFQ fishery and that they are consistent with the Magnuson-Stevens Act, Halibut Act, and other applicable laws.

NMFS prepared a FRFA that describes the impact this final rule would have on small entities. A copy of this analysis is available from NMFS (see ADDRESSES).

This final rule makes three changes to the IFQ program that are necessary to ensure the program continues to be managed in a manner intended by the Council. These changes (1) specify the vessel ownership level for purposes of hiring a skipper to fish the QS holder's IFQ; (2) revise the definition of ''a change in the corporation or partnership'' to clarify when estates must distribute QS being held; and (3) revise sablefish QS limit to be expressed as a specific number rather than as a percentage. The overall impact of these amendments on small entities is as follows: First, the indirect ownership provisions, while conceivably keeping some QS off the open market, will provide fishermen who hold initial allocations of catcher vessel QS an additional option for using their QS; second, the change in the definition of a ''change in the corporation or partnership'' to include language specific to estates will benefit small entities by placing more QS on the market than would otherwise occur when estates, as with all non-individual non-corporate entities, eventually divest themselves of QS; and finally, the revision of the sablefish QS use limits will allow QS holders to manage their QS holdings more efficiently by providing a stable use limit that does not change with changes in the QS pool.

These actions would potentially affect all holders of initially allocated QS in categories B, C, or D in the IFQ Program. The maximum number of affected fishermen could be approximately 3,900 persons, both individual and collective entities, who, as of January 2001, hold category B, C, or D category QS and, by virtue of having received initial allocations, are eligible to hire skippers. The impact of this action would be to create explicit regulatory authority for current NMFS policy. This would give QS holders, whether collective entities or individuals who are partners or shareholders in collectively owned vessels, an additional option to use the hired skipper provisions of the IFQ Program. At present, NMFS has no reliable data indicating how many individual QS holders may be shareholders or partners in collective entities or how many collective entities may have individual members who own fishing vessels. These data are not currently collected as they are not required for managing the existing program. Also, at present, NMFS does not have available the full data necessary to determine the extent to which this action may impact small entities.

The IRFA considered alternatives that would have maintained the status quo or adopted the changes described in this action and analyzed the effect of those alternatives on small entities. The alternatives considered in the IRFA were developed in response to public comments and participation in the Council process. The changes described in this final rule are the same as the alternative developed in the IRFA. NMFS is not aware of any alternatives in addition to those considered in this action that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes while further minimizing the economic impact of the rule on small entities.

No public comments were received during the comment period on the IRFA or the economic impact of the rule generally and, therefore, no changes were made to the analysis based on public comment.

No new reporting, recordkeeping, or compliance requirements are imposed by this final rule.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: April 23, 2002.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq,* 1801 et seq., 3631 *et seq,,* Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.42, paragraphs (e), (j)(2), (j)(3), and (j)(4) are revised, and paragraphs (i)(3) and (j)(7) are added to read as follows.

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(e) Sablefish QS Use. (1) No person, individually or collectively, may use more than 3,229,721 units of sablefish QS, except if the amount of a person's initial allocation of sablefish QS is greater than 3,229,721 units, in which case that person may not use more than the amount of the initial allocation.

(2) In the IFQ regulatory area east of 140° W. long., no person, individually or collectively, may use more than 688,485 units of sablefish QS for this area, except if the amount of a person's initial allocation of sablefish QS is greater than 688,485 units, in which case that person may not use more than the amount of the initial allocation.

* * * * *

(i) * * *

(3) The exemption provided in paragraph (i)(1) of this section may be exercised by an individual on a vessel owned by a corporation, partnership, or other entity in which the individual is a shareholder, partner, or member, provided that the individual maintains a minimum 20 percent interest in the vessel owned by the corporation, partnership, or other entity. For purposes of this paragraph, interest in a vessel is determined as the percentage ownership of a corporation, partnership, or other entity by that individual multiplied by the percentage of ownership of the vessel by the corporation, partnership, or other entity.

(j) * * *

(2) For purposes of this paragraph (j), ''a change'' means:

(i) for corporations and partnerships, the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation or partnership; or

(ii) for estates, the final or summary distribution of the estate.

(3) The Regional Administrator must be notified of a change in the corporation, partnership, or other entity as defined in this paragraph (j) within 15 days of the effective date of the change. The effective date of change, for purposes of this paragraph (j), is the date on which the new shareholder(s) or partner(s) may realize any corporate liabilities or benefits of the corporation or partnership or, for estates, the date of the determination of a legal heir to the estate, or the date of the order for distribution of the estate.

(4) QS assigned to vessel categories B, C, or D and IFQ resulting from that QS held in the name of a corporation, partnership, or other entity that changes, as defined in this paragraph, must be transferred to an individual, as prescribed in § 679.41 of this part, before it may be used at any time after the effective date of the change.

* * * * *

(7) The exemption provided in paragraph (j) of this section may be exercised by a corporation, partnership, or other entity on a vessel owned by a person who is a shareholder in the corporation, partnership, or other entity, provided that the corporation, partnership, or other entity maintains a minimum of 20 percent interest in the vessel. For purposes of this paragraph, interest in a vessel is determined as the percentage of ownership in the corporation, partnership, or other entity by that person who is a shareholder in the corporation, partnership, or other entity, multiplied by the percentage of ownership in the vessel by that person who is a shareholder in the corporation, partnership, or other entity.

* * * * *

[FR Doc. 02–10483 Filed 4–26–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 82
Monday, April 29, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–5]

Proposed Amendment of Class D Airspace; Marietta Dobbins ARB (NAS Atlanta), GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class D airspace at Marietta Dobbins ARB (NAS Atlanta), GA. It has been determined that the Marietta Dobbins ARB Class D airspace be amended to provide for containment of instrument approach procedures within controlled airspace. Adequate controlled airspace should be established for the Airport Surveillance Radar (ASR) Standard Instrument Approach Procedures (SIAPs) to Runways (RWY) 11 and 29. This action would amend the existing Class D airspace by adding Class D airspace extensions from the 5.5—mile radius to 6.9 miles to the east and west of Marietta Dobbins ARB.

DATES: Comments must be received on or before May 29, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–5, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–ASO–5.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class D airspace at Marietta Dobbins ARB (NAS Atlanta), GA. Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraphs 5000 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points,

dated September 1, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO GA D Marietta Dobbins ARB (NAS Atlanta), GA [REVISED]

Dobbins ARB (NAS Atlanta), GA
(Lat. 33°54′55″ N, long. 84°30′59″ W)
Cobb County—McCollum Field
(Lat. 33°00′47″ N, long. 84°35′55″ W)
Fulton County—Brown Field
(Lat. 33°46′45″ N, long. 84°31′17″ W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 5.5—mile radius of Dobbins ARB (NAS Atlanta) and within 1.7 miles each side of the 289° bearing and the 109° bearing from the Dobbins ARB, extending from the 5.5—mile radius to 6.9 miles east and west of the airport; excluding that airspace northwest of a line connecting the 2 points of intersection with a 4—mile radius centered on Cobb County—McCollum Field and the 5.5—mile radius of Dobbins ARB, and also excluding that airspace south of a line connecting the 2 points of intersection with the 4—mile radius centered on Fulton County Airport—Brown Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on April 15, 2002.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–9851 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 02–AEA–04]

Amendment to Class D Airspace, White Plains, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class D airspace at White Plains, NY. Controlled airspace extending upward from the surface to but not including 3000 feet Mean Sea Level (MSL) is necessary to insure continuous altitude coverage for IFR operations to/from the base of the overlying airspace. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before May 29, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–04, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809 telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the F.A.A. to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–AEA–04''. The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D airspace area at Westchester County Airport, White Plains, NY. This additional controlled airspace extending outward from the 4.1 mile radius of the Westchester County Airport up to but not including 3000 feet is needed to accommodate IFR operations at the airport for aircraft on the final approach course to Runway 16. Class D airspace designations for airspace areas extending upward from the surface are published in Section 5000 of FAA Order 7400.9J, dated August 3, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration order 7400.9J dated August 31, 2001, and effective September 16, 2001, is proposed to be amended as follows:

Section 5, Class D airspace areas extending upward from the surface of the earth.

* * * * *

AEA NY D White Plains, NY

Westchester County Airport, White Plains, NY

(Lat. 41° 04′01″N., long 73° 42′27″ W.)

That airspace extending upward from the surface to but not including 3000 feet MSL within a 4.1-radius of the Westchester County Airport and within 1.5 miles each side of White Plains/Westchester County ILS northwest localizer course extending from the 4.1 mile radius to 8.1 miles northwest of the airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York on April 10, 2002.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–9948 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AWP–18]

Proposed Establishment of Class E Airspace; Calipatria, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Calipatria, CA. The establishment of an Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) RNAV (GPS) Runway (RWY) 08 SIAP to Cliff Hatfield Memorial Airport, Calipatria, CA has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 08 SIAP to Cliff Hatfield Memorial Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Cliff Hatfield Memorial Airport, Calipatria, CA.

DATES: Comments must be received on or before May 1, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 01–AWP–18, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–AWP–18.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace area at Calipatria, CA. The establishment of a RNAV (GPS) RWY 08 SIAP at Cliff Hatfield Memorial Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the RNAV (GPS) RWY 08 SIAP to Cliff Hatfield Memorial Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY 08 SIAP to Cliff Hatfield Memorial Airport, Calipatria, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9J dated September 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a

routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

in consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRPSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated September 1, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Calipatria, CA [NEW]

Cliff Hatfield Memorial Airport, CA
(Lat. 33°07′47″ N, long. 115°31′18″ W)
Brawley Municipal Airport, CA.
(Lat. 33°59′35″ N., long. 115°31′01″W.)

That airspace extending upward from 700 feet above the surface within a 6.3 mile radius of Cliff Hatfield Memorial Airport; excluding that portion within the Brawley Municipal Airport, CA, Class E airspace area.

* * * * *

Issued in Los Angeles, California, on March 12, 2002.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 02–10498 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM02–7–000]

Accounting and Reporting of Asset Retirement Obligations

April 23, 2002

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of technical conference and updated agenda.

SUMMARY: The Federal Energy Regulatory Commission (Commission) previously issued a Notice of Informal Technical Conference on March 29, 2002, announcing that the Commission staff will hold a technical conference on May 7, 2002 to discuss the financial accounting, reporting and ratemaking implications related to asset retirement obligations associated with the retirement of tangible long-lived assets. In addition, the March 29, 2002, notice requests written comments be submitted on or before April 29, 2002. Today's notice updates the agenda, showing the names of panelists and times for each panel. All interested parties are invited to attend.

DATES: The May 7, 2002, technical conference begins at 9 a.m. and ends at 4 p.m.

ADDRESSES: Technical conference will be held in the Commission Meeting Room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Mark Klose (Project Manager/Technical Issues), at (202) 219–2595 or *mark.klose@ferc.gov,* Raymond Reid (Technical Issues), at (202) 219–2928 or *raymond.reid@ferc.gov* or Julia Lake (Legal Issues), at (202) 208–2019 or *julia.lake@ferc.gov*

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, it is available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426, during regular business hours and is posted on both the Commission's Issuance Posting System (CIPS) and the Records and Information Management Systems (RIMS), and may be viewed and printed remotely via the Internet through Commission's Home Page: *http: // www.ferc.gov.*

As announced in the Notice of Conference issued March 29, 2002,[1] Commission staff will hold a technical conference on May 7, 2002 to discuss the financial accounting, reporting and ratemaking implications related to asset retirement obligations associated with the retirement of tangible long-lived assets. This one-day conference will begin at 9 a.m. and end at approximately 4 p.m., and will be held in the Commission Meeting Room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. All interested persons are invited to attend.

[1] See 67 FR 16071 (April 4, 2002).

Notice of Techical Conference and Updated Agenda

The Commission staff will discuss the following topics with panelists:

1. The types of fixed assets that have an asset retirement obligation that would be recognized and measured under such a requirement.

2. The impact asset retirement obligations have on depreciation accounting and depreciation procedures.

3. The accounting implementation issues related to the recognition of asset retirement obligations for existing and future long-lived assets.

4. The impact on the Uniform Systems of Accounts and the Commission's rate regulations.

Attached is the updated Agenda, showing names of panelists and times for each panel.

Questions about the conference and the program should be directed to Mark Klose (Project Manager/Technical Issues), at (202) 219–2595 or *mark.klose@ferc.gov,* Raymond Reid (Technical Issues), at (202) 219–2928 or *raymond.reid@ferc.gov* or Julia Lake (Legal Issues), at (202) 208–2019 or *julia.lake@ferc.gov*

Magalie R. Salas,

Secretary.

May 7, 2002 Conference Agenda

I. Opening Remarks—FERC Staff

9 a.m–9:15 a.m.

John M. Delaware, Deputy Executive Director and Chief Accountant

II. Panel 1—CPA Firms/Academia

9:15 a.m.–10:45 a.m.

CPA Firms

Jan Umbaugh, Partner, Deloitte & Touche, LLP.

Mike Barrett, Partner, Ernst & Young, LLP.

Carl Gilbert, Partner, KPMG, LLP.

Kim Staudt, Partner, PricewaterhouseCoopers, LLP.

Academia

Thomas Porter, Ph.D., Georgia State University.

Break

10:45 a.m.–11 a.m.

III. Panel 2—Industry Associations/ Jurisdictional Entities

11 a.m.–12:30 p.m.

Edison Electric Institute

Dane Watson, Property Accounting Services Manager TXU Business Services.

James Henderson, Administrator, Depreciation Studies and Plant Accounting, American Electric Power.

Interstate Natural Gas Association of America

Greg G. Gruber, Senior Vice President, Chief Financial Officer & Treasurer, El Paso Pipeline Group.

Lunch Break

12:30 p.m.–1:30 p.m.

IV. Panel 3—NARUC/Other Regulatory Bodies, and Rural Electric Cooperatives

1:30 p.m.—3 p.m.

National Association of Regulatory Utility Commissioners

Pat Lee, Senior Analyst—PSC, Florida Public Service Commission.

Rural Utilities Services

Kenneth Ackerman, Assistant Administrator, Program Accounting and Regulatory Analysis.

National Rural Electric Cooperative Association

Steve Piecara, Director—Tax Finance and Accounting Policy.

Basin Electric Power Cooperative

Shawn Deisz, Manager, Financial Reporting.

Old Dominion Electric Cooperative

Bob Kees, Assistant Vice President & Controller.

Break

3 p.m.–3:15 p.m.

3:15 p.m.–4 p.m.

V. Panel 4—Other Parties

Brown, Williams, Moorhead and Quinn, Inc.

Ed Feinstein, Vice President.

[FR Doc. 02–10445 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 502

RIN 3141–AA10

Definitions: Electronic or Electromechanical Facsimile; Games Similar to Bingo; Electronic, Computer or Other Technologic Aid to Class II Games

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Proposed rule: notice of extension of time.

SUMMARY: On March 22, 2002, the National Indian Gaming Commission published, for final comment, revised definitions of ''electronic or electromechanical facsimile,'' ''games similar to bingo'' and ''electronic, computer or other technologic aid to class II games.'' Several tribes have requested an extension of time to submit comments. As a result, the date for filing comments is being extended for two weeks.

DATES: Comments shall be filed on or before May 6, 2002.

ADDRESSES: Send comments by mail, facsimile, or hand delivery to: Definitions: Electronic and Electromechanical Facsimile, Amendment Comments, National Indian Gaming Commission, Suite 9100, 1441 L Street, NW., Washington, DC 20005. Fax number: 202–632–7066 (not a toll-free number). Public comments may be delivered or inspected from 9 a.m. until noon and from 2 p.m. to 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Penny J. Coleman at 202–632–7003 or, by fax, at 202–632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (''IGRA'' or ''Act'') 25 U.S.C. 2701–2721, enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). On April 9, 1992, the Commission issued a final rule defining key terms in the Act. Among the terms defined by the Commission was ''electronic or electromechanical facsimile.'' The Commission defined this term by reference to the Johnson Act, 15 U.S.C. 1171(a)(2) and (3). See 25 CFR 502.8. On June 22, 2001, the Commission proposed and sought public comment on removal of 25 CFR 502.8 and on using, instead, the plain language interpretation that has been preferred by the courts. In response to the public comment received, the Commission published, for final comment, revisions to the definition, as well as several other related definitions. 67 FR 13296 (March 22, 2002). At the request of several tribes, the Commission has decided to extend the comment period until May 6, 2002.

Dated: April 23, 2002.

Kevin K. Washburn,

General Counsel, National Indian Gaming Commission.

[FR Doc. 02–10396 Filed 4–26–02; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–105316–98; REG–161424–01]

[RIN 1545–AW67; 1545–BA43]

Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of previous proposed rules; notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document withdraws in part proposed regulations relating to the information reporting requirements under section 6050S. This document also contains new proposed regulations relating to the information reporting requirements under section 6050S for qualified tuition and related expenses. These proposed regulations reflect changes to the law made by the Taxpayer Relief Act of 1997 and the amendments made by the Internal Revenue Service Restructuring and Reform Act of 1998 and Public Law 107–131. The regulations provide guidance to eligible educational institutions that enroll any individual for any academic period. The regulations also provide guidance to insurers that make reimbursements or refunds of qualified tuition and related expenses. This document provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by July 29, 2002. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for August 13, 2002, at 10 a.m. must be received by July 23, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–161424–01), room

5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–161424–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Taxpayers may also submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Donna Welch, (202) 622–4910; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, Donna Poindexter, (202) 622–7180, and concerning the magnetic media filing specifications, waivers for filing on magnetic media, and extensions of time, contact the Internal Revenue Service, Martinsburg Computing Center, (304) 263–8700 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1678.

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

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

Background

1. Summary

This document withdraws § 1.6050S–1 of the notice of proposed rulemaking (REG–105316–98) relating to the information reporting requirements under section 6050S that was published in the **Federal Register** (65 FR 37728) on June 16, 2000 (the 2000 proposed regulations). This document also contains new proposed amendments to 26 CFR part 1 in § 1.6050S–1 relating to information reporting requirements under section 6050S for eligible educational institutions and insurers (these proposed regulations). The IRS and the Treasury Department have determined that the 2000 proposed regulations addressing the information reporting requirements for payees who receive payments of interest on qualified education loans will be finalized in a separate Treasury decision.

2. Effective Date of These Proposed Regulations and Reporting Requirements for the Calendar Year 2002

The information reporting requirements in these proposed regulations are proposed to apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003, for amounts reportable for the calendar year 2003 and subsequent years. These proposed regulations will be not be effective until they are finalized. Therefore, the information reporting requirements in Notice 97–73 (1997–2 C.B. 335), as modified, continue for information returns required to be filed, and information statements required to be furnished, for amounts reportable for the calendar year 2002 (for which the returns and statements are required to be filed and furnished in 2003). However, taxpayers may rely on these proposed regulations for guidance pending issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

3. Current Statutory Provisions

The Taxpayer Relief Act of 1997 (Public Law 105–34 (111 Stat. 788) (TRA '97)) added section 25A of the Internal Revenue Code (Code) to provide the Hope Scholarship Credit and the Lifetime Learning Credit (education tax credit). In general, the education tax credit allows certain taxpayers who pay qualified tuition and related expenses (qualified expenses) to an eligible educational institution (an institution) to claim a nonrefundable credit against their Federal income tax liability. On January 6, 1999, the IRS issued proposed regulations under section 25A. See 64 FR 794 (1999).

In addition, TRA '97 added section 6050S of the Code. Section 6050S was amended by the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206 (112 Stat. 685) (RRA '98)). In general, section 6050S requires eligible educational institutions who receive payments of qualified tuition and related expenses to file information returns and to furnish written information statements to assist taxpayers and the IRS in determining any education tax credit allowable under section 25A (as well as other tax benefits for higher education expenses). See H.R. Conf. Rept. No. 599, 105th Cong., 2d Sess., pp. 319–320 (1998).

In addition, section 6050S requires any person engaged in a trade or business of making payments to any individual under an insurance agreement as reimbursements or refunds of qualified tuition and related expenses (an insurer) to file information returns and to furnish written information statements. Lastly, section 6050S requires certain payees who receive payments of interest on one or more qualified education loans to file information returns and to furnish written information statements to assist taxpayers and the IRS in determining any interest deduction allowable under section 221.

As currently in effect, section 6050S(b) provides that the information return filed by an eligible educational institution or insurer must contain: (1) The name, address, and taxpayer identification number (TIN) of the individual with respect to whom payments were received, or the reimbursements or refunds were made, of qualified tuition and related expenses; (2) the name, address, and TIN of any individual certified by the individual as the taxpayer who will claim that individual as a dependent for purposes of the deduction allowable under section 151 for any taxable year ending with or within the year for which the information return is filed; (3) the aggregate amount of payments of qualified tuition and related expenses received by the eligible educational institution during the calendar year with respect to the individual; (4) the aggregate amount of reimbursements or refunds of qualified tuition and related expenses paid by an institution or an insurer during the calendar year with respect to the individual; (5) the aggregate amount of any scholarships or grants that the eligible educational institution processed during the calendar year for the individual's costs of attendance; and (6) such other information as the Secretary may prescribe.

4. Previous Guidance Under Section 6050S

The IRS has published several notices prescribing limited information reporting for eligible educational institutions for the years 1998, 1999, 2000, and 2001. See Notice 97–73 (1997–2 C.B. 335), Notice 98–46 (1998–36 I.R.B. 21), Notice 98–59 (1998–49 I.R.B. 16), Notice 99–37 (1999–30 I.R.B.

124), and Notice 2000–62 (2000–51 I.R.B. 587).

A notice of proposed rulemaking under section 6050S (REG–105316–98) was published in the **Federal Register** (65 FR 37728) on June 16, 2000. A public hearing was held on the proposed regulations on February 13, 2001. The IRS received written and electronic comments responding to the 2000 notice of proposed rulemaking.

5. Recent Amendments to Section 6050S

Section 6050S was further amended by Public Law 107–131 (115 Stat. 2410), effective for qualified expenses paid or billed after December 31, 2002, for academic periods beginning after December 31, 2002. For calendar years beginning after December 31, 2002, eligible educational institutions may elect to report either the aggregate amount of payments received, or the aggregate amount billed, for qualified tuition and related expenses during the calendar year with respect to individuals enrolled for any academic period. Institutions will no longer be required to report separately any refunds or reimbursements of qualified expenses made during the calendar year that relate to payments received for qualified expenses during the current calendar year. Rather, institutions will be required to report separately only adjustments made during the calendar year to payments received, or amounts billed, for qualified expenses that were reported in a prior calendar year. Institutions will be required to report scholarships or grants received for the individual's costs of attendance that the institution administered and processed during the calendar year. In addition, institutions will be required to report separately adjustments made during the calendar year to scholarships that were reported in a prior calendar year. Section 6050S will no longer require institutions to report the name, address, and TIN of any individual certified by the individual as the taxpayer who will claim that individual as a dependent for purposes of the deduction allowable under section 151 for any taxable year ending with or within the year for which the information return is filed.

These proposed regulations reflect the amendments to section 6050S by Public Law 107–131 and address many of the concerns raised by the educational community in their comments to the 2000 proposed regulations. These proposed regulations for eligible educational institutions and insurers are discussed below.

Explanation of Provisions

1. Information Reporting Relating to Qualified Tuition and Related Expenses

A. Required Reporting and Exceptions to Reporting

Consistent with the amendments to section 6050S by Public Law 107–131, these proposed regulations require an eligible educational institution (as defined in section 25A(f)(2) and the regulations thereunder) (an institution) to file a Form 1098–T, ''Tuition Payment Statement,'' with respect to each individual who is or has been enrolled for any academic period (as defined in the regulations under section 25A) and for whom reportable transactions are made during the calendar year. In addition, these proposed regulations require any person engaged in a trade or business of making payments under an insurance arrangement as reimbursements or refunds (or other similar amounts) of qualified tuition and related expenses (as defined in section 25A(f)(1) and the regulations thereunder) (an insurer) to file a Form 1098–T with the IRS with respect to each individual for whom it makes reimbursements or refunds of qualified expenses.

(i) Reporting Based on Academic Year vs. Calendar Year

The commentators to the 2000 proposed regulations requested that an institution be allowed to report financial data based on an academic year, and not based on a calendar year. Section 6050S requires institutions to report on a calendar year in order to assist taxpayers in calculating the education tax credit that is allowable for qualified expenses paid during a calendar year. Therefore, these proposed regulations do not adopt this recommendation.

(ii) Eligible Educational Institution for Portion of Calendar Year

The commentators to the 2000 proposed regulations requested clarification of the rules for determining which institutions are required to report under section 6050S and the exceptions to reporting. One commentator asked whether an institution that is not an *eligible educational institution* within the meaning of section 25A(f)(2) at the beginning of the calendar year, but becomes an eligible educational institution during the calendar year, is required to report under section 6050S, and, if so, whether the institution must report for the entire calendar year or only the portion of the year in which it is an eligible educational institution. An institution that is an eligible educational institution for any portion of a calendar year must report under section 6050S. Further, because the education tax credit is allowable only for payments made to an eligible educational institution, the institution must report for only the portion of the year in which it is an eligible educational institution.

(iii) Exception for Nonresident Aliens

Several commentators to the 2000 proposed regulations requested clarification of the exception to reporting for an individual who is a nonresident alien. The 2000 proposed regulations provide that an institution or insurer must report for the year that the institution or insurer receives a request from a nonresident alien individual to report and all subsequent years. The commentators recommended that reporting be limited to the calendar year for which the institution or insurer receives the request. The commentators explained that institutions would need to create a new database to report automatically for subsequent years. These proposed regulations provide that any reporting for a nonresident alien individual is limited to the calendar year for which the institution or insurer receives a request.

(iv) Exception for Noncredit Courses

Several commentators to the 2000 proposed regulations requested clarification of the exception to reporting for an individual who is enrolled during the calendar year only in noncredit courses. The commentators noted that the exception is intended to cover students enrolled in courses for which no academic credit is offered, not students who do not receive academic credit in a particular course. Therefore, these proposed regulations clarify that the exception applies to students enrolled only in courses for which academic credit is not offered. In addition, several commentators suggested that the word ''only'' should be removed and that the exception should apply to students who are enrolled both in courses for which no academic credit is offered and in courses offered for credit that may lead toward a postsecondary degree. The exception is intended to cover nondegree students enrolled in courses for which no academic credit is offered, consistent with the legislative history to section 6050S. See H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess., p. 322 (1998). Therefore, these proposed regulations do not adopt this recommendation.

Several commentators to the 2000 proposed regulations recommended that institutions should have discretion to

define what constitutes *academic credit.* The 2000 proposed regulations define academic credit as credit awarded by an institution for the completion of coursework leading toward a postsecondary degree, certificate, or other recognized postsecondary educational credential. This definition provides a uniform test to determine academic credit for information reporting purposes. These proposed regulations retain the definition of academic credit and do not adopt this recommendation.

(v) No Exception for Small Institutions or Small Amounts of Qualified Tuition and Related Expenses

One commentator to the 2000 proposed regulations suggested that the regulations should provide an exception to reporting for institutions with 500 or fewer students, and another commentator suggested that the regulations should provide an exception for qualified expenses of $250 or less. The limited exceptions to required reporting are based on the fact that certain categories of students may not be eligible to claim the education tax credit (e.g., nondegree students enrolled in noncredit courses cannot claim the Hope Scholarship Credit and nonresident alien students are generally not eligible to claim the education tax credit). See H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess., p. 322 (1998). Exceptions to reporting for small institutions or small amounts of qualified expenses have no relationship to a student's eligibility to claim the education tax credit. Therefore, these proposed regulations do not adopt these recommendations.

(vi) Exception for Students Whose Qualified Expenses Are Paid With Scholarships

Several commentators to the 2000 proposed regulations suggested that the regulations should include an exception to reporting for students whose qualified expenses are waived in their entirety or are paid entirely with scholarships. Notice 97–73 provides that institutions are not required to report for such students because the institutions will not have received any payment of qualified expenses on behalf of such students for which the student could, in general, claim the education tax credit. These proposed regulations follow the rule in Notice 97–73 and provide that an institution is not required to report on students whose qualified expenses for the calendar year are waived in their entirety or are paid entirely with scholarships.

(vii) Exception for Students Whose Qualified Expenses Are Covered by Formal Billing Arrangement Between Institution and Student's Employer

Several commentators to the 2000 proposed regulations suggested that the regulations should provide an exception to reporting for students whose qualified expenses are paid by a third party (such as an employer) to the institution through a formal billing arrangement. The commentators explained that often an employer and an institution enter into an agreement in which employees attend the institution, and the institution bills only the employer. In this situation, the institution does not maintain a separate account for each employee/student. These arrangements often constitute employer-provided educational assistance excludable from the employee's gross income under section 127. Under section 25A and the regulations thereunder, taxpayers cannot claim the education tax credit for education expenses paid by an employer which are tax-free to the employee. Therefore, these proposed regulations provide an exception to reporting with respect to any individual whose qualified expenses are covered by a formal billing arrangement between an institution and the individual's employer.

(viii) Family Educational Rights and Privacy Act and Optional Reporting

Several commentators to the 2000 proposed regulations requested clarification as to whether an institution that chooses to report on students otherwise covered by an exception to required reporting would violate the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. section 1232g). The Department of Education has previously determined that reporting under section 6050S does not violate FERPA. We have asked the Department of Education to consider whether this determination extends to institutions that choose to report on students otherwise covered by an exception to required reporting in these proposed regulations.

B. Required Information for Institutions

(i) Reporting of Payments Received vs. Amounts Billed

Based on the provisions of section 6050S prior to the amendments by Public Law 107–131, the 2000 proposed regulations provide that an institution must report the aggregate amount of payments received for qualified expenses, and the aggregate amount of reimbursements or refunds made of qualified expenses, with respect to any individual during the calendar year. Numerous commentators explained that their institutions cannot report payments for, and reimbursements or refunds of, qualified expenses, because their financial systems do not apply payments and reimbursements or refunds to specific charges. According to these institutions, a student's account is a running balance of undesignated payments and reimbursements or refunds. These commentators suggested that the regulations should allow institutions that are unable to report payments received for, and reimbursements or refunds made of, qualified expenses, to report instead: (1) the amount billed with respect to any individual for qualified expenses during the calendar year; and (2) the amount of any reductions to the amounts billed with respect to the individual.

Consistent with section 6050S as amended by Public Law 107–131, these proposed regulations provide that institutions may elect to report either the payments received, or the amounts billed, during the calendar year for qualified tuition and related expenses with respect to individuals enrolled for an academic period beginning during the calendar year or during a prior calendar year.

(ii) Reporting Adjustments to Payments Received (or Amounts Billed) for a Prior Calendar Year

The commentators to the 2000 proposed regulations suggested that the regulations should distinguish between reimbursements or refunds that relate to payments received during the current calendar year and those that relate to payments for prior calendar years. The commentators suggested that, rather than reporting separately aggregate payments and aggregate reimbursements or refunds, institutions should be permitted to net current year payments of qualified expenses against any refunds of such current year payments, and to report only the net payments received for qualified expenses during the current calendar year. These commentators suggested that institutions should be required to report separately only the amount of any reimbursements or refunds made in the current year that relate to qualified expenses paid that were reported in a prior calendar year.

Consistent with this approach, the commentators also suggested that institutions reporting amounts billed should be permitted to net amounts billed for qualified expenses for the current year against any reductions in amounts billed for qualified expenses

for the current year, and to report only the net amount billed for qualified expenses during the current calendar year. Similarly, the commentators suggested that these institutions should be required to report separately only those reductions made in the current year that relate to amounts billed for qualified expenses that were reported in a prior calendar year.

Congress adopted this approach in the amendments to section 6050S by Public Law 107–131. As amended, section 6050S will require institutions to report separately only adjustments made during the calendar year to payments received, or amounts billed, that relate to amounts that were reported for a prior calendar year. For example, for institutions that report based on payments received, separate reporting will be required only for refunds or reimbursements of qualified expenses made during the calendar year that relate to payments of qualified expenses that were reported for a prior calendar year. For institutions that report based on amounts billed, separate reporting will be required only for reductions in charges made during the calendar year that relate to amounts billed for qualified expenses that were reported for a prior calendar year.

Therefore, for institutions that report based on payments received, these proposed regulations provide that, in determining the amounts to be reported under section 6050S for a calendar year, payments received for qualified expenses during the calendar year must be netted against any reimbursements or refunds of qualified expenses made during the calendar year that relate to payments received for qualified expenses during the same calendar year. These regulations also provide that reimbursements or refunds made during the calendar year that relate to payments of qualified expenses that were reported for a prior calendar year must be reported separately.

Similarly, for institutions that report based on amounts billed, these proposed regulations provide that, in determining the amounts to be reported under section 6050S for a calendar year, the amount billed for qualified expenses during the calendar year must be netted against any reductions in charges for qualified expenses made during the calendar year that relate to amounts billed for qualified expenses during the same calendar year. These regulations also provide that any reductions in charges made during the calendar year that relate to amounts reported as billed for a prior calendar year must be reported separately.

These regulations are proposed to apply to payments received, and amounts billed, for qualified expenses beginning in 2003. Therefore, the first year for which institutions may be required to collect information regarding any reimbursements or refunds of prior year reportable payments (or any reductions in reportable amounts billed for a prior year) is 2004. The amount of any reimbursements or refunds (or reductions) made in 2004 for amounts paid (or billed) in 2003 would be reported on the 2004 Forms 1098–T filed in early 2005.

(iii) Reporting Adjustments to Scholarships for a Prior Calendar Year

Consistent with section 6050S as amended by Public Law 107–131, these proposed regulations provide that all institutions must report separately any reductions in the amount of scholarships or grant aid reported for a prior calendar year.

(iv) Name, Address, and TIN of Taxpayer

The 2000 proposed regulations reserve the requirement in section 6050S(b)(2)(B) that an institution or insurer obtain and report the name, address, and TIN of any taxpayer who will claim the individual as a dependent for purposes of the deduction allowable under section 151 for the taxable year. This statutory requirement will be eliminated by the amendments to section 6050S by Public Law 107–131. Therefore, consistent with section 6050S as amended, these proposed regulations remove this requirement.

(v) Half-Time Indicator

Several commentators to the 2000 proposed regulations suggested that institutions should not be required to indicate whether a student was enrolled at least half time. Another commentator suggested that institutions should be required to provide the half-time indicator only for students enrolled in undergraduate studies. An indication as to whether a student was enrolled at least half time for one academic period is useful information for the IRS to verify whether the student may be eligible to claim the Hope Scholarship Credit and certain other education tax benefits, and this information is readily available to institutions. Therefore, these proposed regulations do not adopt these recommendations.

(vi) Information Statement

The 2000 proposed regulations provide that an institution or insurer must furnish an information statement to each individual for whom it is required to file a Form 1098–T. The statement must include specific instructions to the taxpayer. These proposed regulations provide that the instructions must state that a taxpayer may claim an education tax credit only for amounts actually paid during the calendar year. These proposed regulations also provide that the instructions must state that the amount of any refunds or reimbursements of payments received, or reductions in charges, for qualified expenses or any reductions in grant aid reported for a prior calendar year may affect the amount of any education tax credit allowable for the prior calendar year.

The 2000 proposed regulations provide that the statement must include the name, address, and phone number of the individual who is the information contact for the institution or insurer that filed the Form 1098–T. Several commentators to the 2000 proposed regulations requested that the regulations should not require the name of an individual. The commentators explained that it is not feasible for institutions to provide an individual as the information contact and requested that institutions be allowed to provide an office or department of the institution as the information contact. These proposed regulations adopt this recommendation.

The 2000 proposed regulations reserve the requirement in section 6050S(d) that an institution or insurer furnish a statement to any taxpayer who will claim the individual as a dependent for purposes of the deduction allowable under section 151 for the taxable year. This statutory requirement will be eliminated by the amendments to section 6050S by Public Law 107–131. Therefore, consistent with section 6050S as amended, these regulations remove this requirement.

C. Required Information for Insurers

The information reporting requirements for insurers is not changed by the amendments to section 6050S by Public Law 107–131. Therefore, these proposed regulations continue to provide that an insurer must file an information return for each individual with respect to whom reimbursements or refunds of qualified tuition and related expenses are made during the calendar year. An insurer must include: (1) The name, address, and TIN of the insurer; (2) the name, address, and TIN of the individual with respect to whom reimbursements or refunds of qualified tuition and related expenses were made; and (3) the aggregate amount of reimbursements or refunds of qualified

tuition and related expenses that the insurer made with respect to the individual during the calendar year.

D. Information Reporting Penalties

(i) Penalty Notification

These proposed regulations, as well as the 2000 proposed regulations, provide that an institution or insurer may be subject to a penalty under section 6721 for failure to file correct Forms 1098–T and a penalty under section 6722 for failure to furnish correct information statements. The 2000 proposed regulations provide that an institution or insurer must notify the individual that the IRS may impose a $50 penalty for failure to provide a TIN. Several commentators to the 2000 proposed regulations requested that the penalty notification be removed. Section 6723 and the regulations thereunder authorize the IRS to impose a $50 penalty if an individual fails to provide his or her TIN as required but do not require an institution or insurer to give prior notification of the penalty. Therefore, these proposed regulations adopt this recommendation.

(ii) Annual TIN Solicitation Requirement

Several commentators to the 2000 proposed regulations recommended that institutions not be required to request an individual's TIN annually if the institution does not have the individual's TIN. These proposed regulations continue to provide that, in order to establish a waiver of the information reporting penalties for reasonable cause, an institution or insurer must request an individual's TIN annually if it does not have the TIN. The annual solicitation rule in these regulations is consistent with the general solicitation requirements in section 301.6724–1(e) and (f) that a filer must meet in order to establish reasonable cause. These proposed regulations clarify that a separate solicitation is not necessary if an institution requests an individual's TIN through admission or enrollment forms or financial aid applications.

(iii) Filing Information Returns With Missing TINs

Several commentators to the 2000 proposed regulations requested that institutions not be required to file information returns and to furnish information statements for individuals who refuse to provide their TINs. Information returns and information statements with missing TINs are useful to both the IRS and the individual in verifying the amount of any allowable education tax credit (as well as other tax benefits for higher education expenses). Therefore, these proposed regulations do not adopt this recommendation.

2. Requirement To File Information Returns on Magnetic Media

These regulations propose to amend the regulations under section 6011(e) to require institutions and insurers who are required to file 250 or more Forms 1098–T to file on magnetic media.

Special Analyses

It has been determined that these proposed regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. An initial regulatory flexibility analysis has been prepared for this notice of proposed rulemaking under section 5 U.S.C. 603 and is set forth under the heading ''Initial Regulatory Flexibility Analysis'' in this preamble. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Initial Regulatory Flexibility Analysis

The collection of information contained in § 1.6050S–1 is needed to assist the IRS and taxpayers in determining the amount of any education tax credit allowable under section 25A. The objectives of these regulations are to provide uniform, practicable, and administrable rules under section 6050S. The types of small entities to which the regulations may apply are small eligible educational institutions (such as colleges and universities) and certain insurers who reimburse educational expenses. As of the end of 2001, a total of 19,817,563 Forms 1098–T were filed with the IRS for 2000. The estimated reporting burden for 2001 is 9 minutes per Form 1098–T. No special professional skills are necessary for preparation of the reports or records. There are no known Federal rules that duplicate, overlap, or conflict with these proposed regulations. The regulations proposed are considered to have the least economic impact on small entities of all alternatives considered.

Moreover, the proposed regulations requiring filing Forms 1098–T on magnetic media impose no additional reporting or recordkeeping and only prescribe the method of filing information returns that are already required to be filed. Further, these regulations are consistent with the statutory requirement that an institution or insurer is not required to file Forms 1098–T on magnetic media unless required to file at least 250 or more returns during the year. Finally, the economic impact caused by requiring Forms 1098–T on magnetic media should be minimal because most institution's or insurer's operations are computerized. Even if their operations are not computerized, the incremental cost of magnetic media reporting should be minimal in most cases because of the availability of computer service bureaus. In addition, the existing regulations under section 6011(e) provide that the IRS may waive the magnetic media filing requirements on a showing of hardship. The waiver authority will be exercised so as not to unduly burden institutions and insurers lacking both the necessary data processing facilities and access at a reasonable cost to computer service bureaus.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 13, 2002, beginning at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by July 23, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has

passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the regulations is Donna Welch, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income tax, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment tax, Estate tax, Excise tax, Gift tax, Income tax, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAX

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

Authority: 26 U.S.C. 7805 * * * 1.6050S–1 also issued under section 26 U.S.C. 6050S(g). * * *

Par. 2. Sections 1.6050S–0 is amended by revising the introductory language and adding new entries for § 1.6050S–1 to read as follows:

§ 1.6050S–0 Table of contents

This section lists captions contained in §§ 1.6050S–1, 1.6050S–2T, 1.6050S–3, and 1.6050S–4T.

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* * * * *

Par. 3. Section 1.6050S–1 is added to read as follows:

§ 1.6050S–1 Information reporting for qualified tuition and related expenses.

(a) *Information reporting requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, any eligible educational institution (as defined in section 25A(f)(2) and the regulations thereunder) (an institution) that enrolls (as determined under paragraph (d)(1) of this section) any individual for any academic period (as defined in the regulations under section 25A), and any person that is engaged in a trade or business of making payments under an insurance arrangement as reimbursements or refunds (or other similar amounts) of qualified tuition and related expenses (as defined in section 25A(f)(1) and the regulations thereunder) (an insurer) must—

(i) File an information return, as described in paragraph (b) of this section, with the Internal Revenue Service (IRS) with respect to each individual described in paragraph (b) of this section; and

(ii) Furnish a statement, as described in paragraph (c) of this section, to each individual described in paragraph (c) of this section.

(2) *Exceptions*—(i) *No reporting by institution or insurer for nonresident alien individuals.* The information reporting requirements of this section do not apply with respect to any individual who is a nonresident alien (as defined in section 7701(b) and § 301.7701(b)–3 of this chapter) during the calendar year, unless the individual requests the institution or insurer to report. If a nonresident alien individual requests an institution or insurer to report, the institution or insurer must comply with the requirements of this section for the calendar year with respect to which the request is made.

(ii) *No reporting by institutions for individuals enrolled only in noncredit courses*—(A) *In general.* The information reporting requirements of this section do not apply with respect to any individual who is enrolled during the calendar year only in courses for

which no academic credit is offered by the institution.

(B) *Academic credit defined. Academic credit* means credit offered by an institution for the completion of coursework leading toward a post-secondary degree, certificate, or other recognized post-secondary educational credential.

(C) *Example.* The following example illustrates the rules of this paragraph (a)(2)(ii):

Example. Student A, a medical doctor, takes a course at University X's medical school. Student A takes the course to fulfill State Y's licensing requirement that medical doctors attend continuing medical education courses each year. Student A is not enrolled in a degree program at University X and takes the medical course through University X's continuing professional education division. University X does not offer Student A credit toward a post-secondary degree on an academic transcript for the completion of the course but gives Student A a certificate of attendance upon completion. Under this paragraph (a)(2)(ii), University X is not subject to the information reporting requirements of section 6050S and this section for the medical education course taken by Student A.

(iii) *No reporting by institutions for individuals whose qualified tuition and related expenses are waived or are paid with scholarships.* The information reporting requirements of this section do not apply with respect to any individual whose qualified tuition and related expenses are waived in their entirety or are paid entirely with scholarships.

(iv) *No reporting by institutions for individuals whose qualified tuition and related expenses are covered by a formal billing arrangement*—(A) *In general.* The information reporting requirements of this section do not apply with respect to any individual whose qualified tuition and related expenses are covered by a formal billing arrangement between an institution and the individual's employer.

(B) *Formal billing arrangement defined.* A *formal billing arrangement* means an arrangement in which the institution bills only the employer for education furnished by the institution to an individual who is the employer's employee and the institution does not maintain a separate financial account for that individual.

(b) *Requirement to file return*—(1) *In general.* Institutions may elect to report either the information described in paragraph (b)(2) of this section, or the information described in paragraph (b)(3) of this section. Once an institution elects to report under either paragraph (b)(2) or (3) of this section, the institution must use the same reporting method for all calendar years in which it is required to file returns, unless permission is granted to change reporting methods. Paragraph (b)(2) requires institutions to report, among other information, the amount of payments received during the calendar year for qualified tuition and related expenses. Institutions must report separately adjustments made during the calendar year that relate to payments received for qualified tuition and related expenses that were reported for a prior calendar year. For purposes of paragraph (b)(2), an adjustment made to payments received means a reimbursement or refund. Paragraph (b)(3) requires institutions to report, among other information, the amounts billed during the calendar year for qualified tuition and related expenses. Institutions must report separately adjustments made during the calendar year that relate to amounts billed for qualified tuition and related expenses that were reported for a prior calendar year. For purposes of paragraph (b)(3), an adjustment made to amounts billed means a reduction in charges. Insurers must report the information described in paragraph (b)(4) of this section.

(2) *Information reporting requirements for institutions that elect to report payments received for qualified tuition and related expenses*—(i) *In general.* Except as provided in paragraph (a)(2) of this section, an institution reporting payments received for qualified tuition and related expenses must file an information return with the IRS on Form 1098–T, ''Tuition Payments Statement,'' with respect to each individual enrolled (as determined in paragraph (d)(1) of this section) for an academic period beginning during the calendar year or during a prior calendar year and for whom a reportable transaction described in paragraph (b)(2)(ii) of this section is made during the calendar year. An institution may use a substitute Form 1098–T if the substitute form complies with applicable revenue procedures relating to substitute forms (see § 601.601(d)(2) of this chapter).

(ii) *Information included on return.* An institution reporting payments received for qualified tuition and related expenses must include on Form 1098–T—

(A) The name, address, and taxpayer identification number (TIN)(as defined in section 7701(a)(41)) of the institution;

(B) The name, address, and TIN of the individual who is, or has been, enrolled by the institution;

(C) The amount of payments of qualified tuition and related expenses from any source that the institution received with respect to the individual during the calendar year;

(D) An indication by the institution whether any payments received for qualified tuition and related expenses reported for the calendar year relate to an academic period that begins during the first three months of the next calendar year;

(E) The amount of any scholarships or grants for the payment of the individual's costs of attendance that the institution administered and processed during the calendar year;

(F) The amount of any reimbursements or refunds of qualified tuition and related expenses made during the calendar year with respect to the individual that relate to payments of qualified tuition and related expenses that were reported by the institution for a prior calendar year;

(G) The amount of any reductions to the amount of scholarships or grants for the payment of the individual's costs of attendance that were reported by the institution with respect to the individual for a prior calendar year;

(H) An indication by the institution whether the individual was enrolled for at least half of the normal full-time work load for the course of study the individual is pursuing for at least one academic period that begins during the calendar year (see section 25A and the regulations thereunder);

(I) An indication by the institution whether the individual was enrolled in a program leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential; and

(J) Any other information required by Form 1098–T and its instructions.

(iii) *Reportable amount of payments received for qualified tuition and related expenses during calendar year determined.* The amount of payments received for qualified tuition and related expenses with respect to an individual during the calendar year that is reportable on Form 1098-T is determined by netting the amount of payments received (as defined in paragraph (b)(2)(v) of this section) for qualified tuition and related expenses during the calendar year against any reimbursements or refunds (as defined in paragraph (b)(2)(vi) of this section) made during the calendar year that relate to payments received for qualified tuition and related expenses during the same calendar year.

(iv) *Separate reporting of reimbursements or refunds of payments of qualified tuition and related expenses that were reported for a prior calendar year.* An institution must separately report on Form 1098–T any

reimbursements or refunds (as defined in paragraph (b)(2)(vi) of this section) made during the current calendar year that relate to payments of qualified tuition and related expenses that were reported by the institution for a prior calendar year. Such reimbursements or refunds shall not be netted against the payments received for qualified tuition and related expenses during the current calendar year.

(v) *Payments received for qualified tuition and related expenses determined.* For purposes of determining the amount of payments received for qualified tuition and related expenses during a calendar year, payments received with respect to an individual during the calendar year from any source (except for any scholarship or grant that, by its terms, must be applied to expenses other than qualified tuition and related expenses, such as room and board) are treated as payments of qualified tuition and related expenses up to the total amount billed by the institution for such expenses. For purposes of this section, a payment includes any positive account balance (such as any reimbursement or refund credited to an individual's account) that an institution applies toward current charges.

(vi) *Reimbursements or refunds of payments for qualified tuition and related expenses determined.* For purposes of determining the amount of reimbursements or refunds made of payments received for qualified tuition and related expenses, any reimbursement or refund made with respect to an individual during a calendar year (except for any refund of scholarship or grant that, by its terms, was required to be applied to expenses other than qualified tuition and related expenses, such as room and board), is treated as a reimbursement or refund of payments for qualified tuition and related expenses up to the amount of any reduction in charges for such expenses. For purposes of this section, a reimbursement or refund includes amounts that an institution credits to an individual's account, as well as amounts disbursed to, or on behalf of, the individual.

(vii) *Examples.* The following examples illustrate the rules in this paragraph (b)(2):

Example 1. (i) In early August 2003, University X bills enrolled Student A $10,000 for tuition and $6,000 for room and board for the 2003 Fall semester. In late August 2003, Student A pays $11,000 to University X. In early September 2003, Student A drops to half-time enrollment for the 2003 Fall semester. In late September 2003, University X credits $5,000 to Student A's account, reflecting a $5,000 reduction in charges for qualified tuition and related expenses. In late September 2003, University X applies the $5,000 positive account balance toward current charges.

(ii) Under paragraph (b)(2)(v) of this section, the $11,000 payment is treated as a payment of qualified tuition and related expenses up to the $10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the $5,000 credited to the student's account is treated as a reimbursement or refund of payments for qualified tuition and related expenses, because the current year charges for qualified tuition and related expenses were reduced by $5,000. Under paragraph (b)(2)(iii) of this section, University X is required to net the $10,000 tuition payment received during 2003 against the $5,000 reimbursement or refund of payments received for qualified tuition and related expenses during 2003. Therefore, Institution X is required to report $5,000 of payments received for qualified tuition and related expenses during 2003.

Example 2. (i) The facts are the same as in *Example 1,* except that Student A pays the full $16,000 in late August 2003. In late September 2003, University X reduces the tuition charges by $5,000 and issues a $5,000 refund to Student A.

(ii) Under paragraph (b)(2)(v) of this section, the $16,000 payment is treated as a payment of qualified tuition and related expenses up to the $10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the $5,000 refund is treated as reimbursement or refund of payments for qualified tuition and related expenses, because the current year charges for qualified tuition and related expenses were reduced by $5,000. Under paragraph (b)(2)(iii) of this section, University X is required to net the $10,000 tuition payment received during 2003 against the $5,000 reimbursement or refund of payments received for qualified tuition and related expenses during 2003. Therefore, Institution X is required to report $5,000 of payments received for qualified tuition and related expenses during 2003.

Example 3. (i) The facts are the same as in *Example 1,* except that Student A is enrolled full-time, and, in early September 2003, Student A decides to live at home with her parents. In late September 2003, University X adjusts Student A's account to eliminate room and board charges and issues a $1,000 refund to Student A.

(ii) Under paragraph (b)(2)(v) of this section, the $11,000 payment is treated as a payment of qualified tuition and related expenses up to the $10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the $1,000 refund is not treated as reimbursement or refund of payments for qualified tuition and related expenses, because there is no reduction in charges for qualified tuition and related expenses. Therefore, under paragraph (b)(2)(iii) of this section, University X is required to report $10,000 of payments received for qualified tuition and related expenses during 2003.

Example 4. (i) In early December 2003, College Y bills enrolled Student B $10,000 for tuition and $6,000 for room and board for the 2004 Spring semester. In late December 2003, Student B pays $16,000. In mid-January 2004, after the 2004 Spring semester classes begin, Student B drops to half-time enrollment. In mid-January 2004, College Y credits Student B's account with $5,000, reflecting a $5,000 reduction in charges for qualified tuition and related expenses, but does not issue a refund to Student B. In early August 2004, College Y bills Student B $10,000 for tuition and $6,000 for room and board for the 2004 Fall semester. In early September 2004, College Y applies the $5,000 positive account balance toward Student B's $16,000 bill for the 2004 Fall semester. In late September 2004, Student B pays $6,000 towards the charges.

(ii) Reporting for calendar year 2003. Under paragraph (b)(2)(v) of this section, the $16,000 payment in December 2003 is treated as a payment of qualified tuition and related expenses up to the $10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(iii) of this section, College Y is required to report $10,000 of payments received for qualified tuition and related expenses during 2003. In addition, College Y is required to indicate that the payments reported for 2003 relate to an academic period that begins during the first three months of the next calendar year.

(iii) Reporting for calendar year 2004. Under paragraph (b)(2)(vi) of this section, the $5,000 credited to Student B's account is treated as a reimbursement or refund of qualified tuition and related expenses, because the charges for qualified tuition and related expenses were reduced by $5,000. Under paragraph (b)(2)(iv) of this section, the $5,000 reimbursement or refund of qualified tuition and related expenses must be separately reported on Form 1098-T because it relates to payments of qualified tuition and related expenses reported by College Y for 2004. Under paragraph (b)(2)(v) of this section, the $5,000 positive account balance that is applied toward charges for the 2004 Fall semester is treated as a payment. Therefore, College Y received total payments of $11,000 during 2004 (the $5,000 credit plus the $6,000 payment). Under paragraph (b)(2)(v) of this section, the $11,000 of total payments are treated as a payment of qualified tuition and related expenses up to the $10,000 billed for such expenses. Therefore, for 2004, College Y is required to report $10,000 of payments received for qualified tuition and related expenses during 2004 and a $5,000 refund of payments of qualified tuition and related expenses reported for 2003.

(3) *Information reporting requirements for institutions that elect to report amounts billed for qualified tuition and related expenses*—(i) *In general.* Except as provided in paragraph (a)(2) of this section, an institution reporting amounts billed for qualified tuition and related expenses must file an information return on Form 1098–T with respect to each individual enrolled (as determined in paragraph (d)(1) of this section) for an academic period beginning during the calendar

year or during a prior calendar year and for whom a reportable transaction described in paragraph (b)(3)(ii) of this section is made during the calendar year. An institution may use a substitute Form 1098–T if the substitute form complies with applicable revenue procedures relating to substitute forms.

(ii) *Information included on return.* An institution reporting amounts billed for qualified tuition and related expenses must include on Form 1098–T—

(A) The name, address, and taxpayer identification number (TIN)(as defined in section 7701(a)(41)) of the institution;

(B) The name, address, and TIN of the individual who is, or has been, enrolled by the institution;

(C) The amount billed for qualified tuition and related expenses with respect to the individual during the calendar year;

(D) An indication by the institution whether any amounts billed for qualified tuition and related expenses reported for the calendar year relate to an academic period that begins during the first three months of the next calendar year;

(E) The amount of any scholarships or grants for the payment of the individual's costs of attendance that the institution administered and processed during the calendar year;

(F) The amount of any reductions in charges made during the calendar year with respect to the individual that relate to amounts billed for qualified tuition and related expenses that were reported by the institution for a prior calendar year;

(G) The amount of any reductions to the amount of scholarships or grants for the payment of the individual's costs of attendance that were reported by the institution with respect to the individual for a prior calendar year;

(H) An indication by the institution whether the individual was enrolled for at least half of the normal full-time work load for the course of study the individual is pursuing for at least one academic period that begins during the calendar year (see section 25A and the regulations thereunder);

(I) An indication by the institution whether the individual was enrolled in a program leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential; and

(J) Any other information required by Form 1098–T and its instructions.

(iii) *Reportable amounts billed for qualified tuition and related expenses during calendar year determined.* The amount billed for qualified tuition and related expenses with respect to an individual during the calendar year that is reportable on Form 1098–T is determined by netting the amounts billed for qualified tuition and related expenses during the calendar year against any reductions in charges for qualified tuition and related expenses made during the calendar year that relate to amounts billed for qualified tuition and related expenses during the same calendar year.

(iv) *Separate reporting of reductions made to amounts billed for qualified tuition and related expenses that were reported for a prior calendar year.* An institution must separately report on Form 1098–T any reductions in charges made during the current calendar year that relate to amounts billed for qualified tuition and related expenses that were reported by the institution for a prior calendar year. Such reductions shall not be netted against amounts billed for qualified tuition and related expenses during the current calendar year.

(v) *Examples.* The following examples illustrate the rules in this paragraph (b)(3):

Example 1. (i) In early August 2003, University X bills enrolled Student A $10,000 for tuition and $6,000 for room and board for the 2003 Fall semester. In late August 2003, Student A pays $11,000 to University X. In early September 2003, Student A drops to half-time enrollment for the 2003 Fall semester. In late September 2003, University X adjusts Student A's account and reduces the tuition charges by $5,000 to reflect half-time enrollment. In late September 2003, University X applies the $5,000 account balance toward current charges.

(ii) Under paragraph (b)(3)(iii) of this section, University X is required to net the $10,000 amount of tuition billed during 2003 against the $5,000 reduction in charges for qualified tuition and related expenses during 2003. Therefore, Institution X is required to report $5,000 in amounts billed for qualified tuition and related expenses during 2003.

Example 2. (i) The facts are the same as in *Example 1,* except that, in addition, in early December 2003, College X bills Student A $10,000 for tuition and $6,000 for room and board for the 2004 Spring semester. In late December 2003, Student A pays $16,000. In mid-January 2004, after the 2004 Spring semester classes begin, Student A drops to half-time enrollment. In mid-January 2004, College X credits $5,000 to Student A's account, reflecting a $5,000 reduction in charges for qualified tuition and related expenses, but does not issue a refund check to Student A. In early August 2004, College X bills Student A $10,000 for tuition and $6,000 for room and board for the 2004 Fall semester. In early September 2004, College X applies the $5,000 positive account balance toward Student A's $16,000 bill for the 2004 Fall semester. In late September 2004, Student A pays $6,000 toward the charges.

(ii) Reporting for calendar year 2003. Under paragraph (b)(3)(iii) of this section, College X is required to report $15,000 amounts billed for qualified tuition and related expenses during 2003 ($5,000 for the 2003 Fall semester and $10,000 for the 2004 Spring semester. In addition, College X is required to indicate that some of the amounts billed for qualified tuition and related expenses reported for 2003 relate to an academic period that begins during the first three months of the next calendar year.

(iii) Reporting for calendar year 2004. Under paragraph (b)(3)(iv) of this section, the $5,000 reduction in charges for qualified tuition and related expenses must be separately reported on Form 1098–T because it relates to amounts billed for qualified tuition and related expenses that were reported by College X for 2003. Under paragraph (b)(3)(iii) of this section, College X is required to report $10,000 in amounts billed for qualified tuition and related expenses during 2004.

(4) *Requirements for insurers*—(i) *In general.* Except as otherwise provided in this section, an insurer must file an information return for each individual with respect to whom reimbursements or refunds of qualified tuition and related expenses are made during the calendar year on Form 1098–T. An insurer may use a substitute Form 1098–T if the substitute form complies with applicable revenue procedures relating to substitute forms (see § 601.601(d)(2) of this chapter).

(ii) *Information included on return.* An insurer must include on Form 1098–T—

(A) The name, address, and taxpayer identification number (TIN) (as defined in section 7701(a)(41)) of the insurer;

(B) The name, address, and TIN of the individual with respect to whom reimbursements or refunds of qualified tuition and related expenses were made;

(C) The aggregate amount of reimbursements or refunds of qualified tuition and related expenses that the insurer made with respect to the individual during the calendar year; and

(D) Any other information required by Form 1098–T and its instructions.

(5) *Time and place for filing return*—(i) *In general.* Except as provided in paragraphs (b)(5)(ii) and (iii) of this section, Form 1098–T must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which payments were received, or amounts were billed, for qualified tuition or related expenses, or reimbursements, refunds, or reductions of such amounts were made. An institution or insurer must file Form 1098–T with the IRS according to the instructions to Form 1098–T.

(ii) *Return for nonresident alien individual.* In general, an institution or insurer is not required to file a return on

behalf of a nonresident alien individual. However, if a nonresident alien individual requests an institution or insurer to report, the institution or insurer must file a return described in paragraph (b) of this section with the IRS on or before the date prescribed in paragraph (b)(5)(i) of this section, or on or before the thirtieth day after the request, whichever is later.

(iii) *Extensions of time.* The IRS may grant an institution or insurer an extension of time to file returns required in this section upon a showing of good cause. See the instructions to Form 1098–T and applicable revenue procedures for rules relating to extensions of time to file (see § 601.601(d)(2) of this chapter).

(6) *Use of magnetic media.* See section 6011(e) and § 301.6011–2 of this chapter for rules relating to the requirement to file Forms 1098–T on magnetic media.

(c) *Requirement to furnish statement*—(1) *In general.* An institution or insurer must furnish a statement to each individual for whom it is required to file a Form 1098–T. The statement must include—

(i) The information required under paragraph (b) of this section;

(ii) A legend that identifies the statement as important tax information that is being furnished to the IRS;

(iii) Instructions that—

(A) State that the statement reports either total payments received by the institution for qualified tuition and related expenses during the calendar year, or total amounts billed by the institution for qualified tuition and related expenses during the calendar year, or the total reimbursements or refunds made by the insurer;

(B) State that, under section 25A and the regulations thereunder, the taxpayer may claim an education tax credit only with respect to qualified tuition and related expenses actually paid during the calendar year; and that the taxpayer may not be able to claim an education tax credit with respect to the entire amount of payments received, or amounts billed, for qualified tuition and related expenses reported for the calendar year;

(C) State that the amount of any scholarships or grants reported for the calendar year and other similar amounts not reported (because they are not administered and processed by the institution) may reduce the amount of any allowable education tax credit for the taxable year;

(D) State that the amount of any reimbursements or refunds of payments received, or reductions in charges, for qualified tuition and related expenses, or any reductions to the amount of scholarships or grants, reported by the institution with respect to the individual for a prior calendar year may affect the amount of any allowable education tax credit for the prior calendar year;

(E) State that the amount of any reimbursements or refunds of qualified tuition and related expenses reported by an insurer may reduce the amount of an allowable education tax credit for a taxable year;

(F) State that the taxpayer should refer to relevant IRS forms and publications, and should not refer to the institution or the insurer, for explanations relating to the eligibility requirements for, and calculation of, any allowable education tax credit; and

(G) Include the name, address, and phone number of the office or department within the institution or insurer that is the information contact for the institution or insurer that filed the Form 1098–T.

(2) *Time and manner for furnishing statement*—(i) *In general.* Except as provided in paragraphs (c)(2)(ii) and (iii) of this section, an institution or insurer must furnish the statement described in paragraph (c)(1) of this section to each individual for whom it is required to file a return, on or before January 31 of the year following the calendar year in which payments were received, or amounts were billed, for qualified tuition and related expenses, or reimbursements, refunds, or reductions of such amounts were made. If mailed, the statement must be sent to the individual's permanent address, or the individual's temporary address if the institution or insurer does not know the individual's permanent address. If furnished electronically, the statement must be furnished in accordance with the applicable regulations.

(ii) *Statement to nonresident alien individual.* If an information return is filed for a nonresident alien individual, the institution or insurer must furnish a statement described in paragraph (c)(1) of this section to the individual in the manner and on or before the date prescribed in paragraph (c)(2)(i) of this section, or on or before the thirtieth day after the nonresident alien's request to report, whichever is later.

(iii) *Extensions of time.* The IRS may grant an institution or insurer an extension of time to furnish the statements required in this section upon a showing of good cause. See the instructions to Form 1098–T and applicable revenue procedures for rules relating to extensions of time to furnish statements (see § 601.601(d)(2) of this chapter).

(3) *Copy of Form 1098–T.* An institution or insurer may satisfy the requirement of this paragraph (c) by furnishing either a copy of Form 1098–T and its instructions or another document that contains all of the information filed with the IRS and the information required by paragraph (c)(1) of this section if the document complies with applicable revenue procedures relating to substitute statements (see § 601.601(d)(2) of this chapter).

(d) *Special rules*—(1) *Enrollment determined.* An institution may determine its enrollment for each academic period under its own rules and policies for determining enrollment or as of any of the following dates—

(i) 30 days after the first day of the academic period;

(ii) A date during the academic period on which enrollment data must be collected for purposes of the Integrated Post Secondary Education Data System administered by the Department of Education; or

(iii) A date during the academic period on which the institution must report enrollment data to the State, the institution's governing body, or some other external governing body.

(2) *Payments of qualified tuition and related expenses received or collected by one or more persons*—(i) *In general.* Except as otherwise provided in paragraph (d)(2)(ii) of this section, if a person collects or receives payments of qualified tuition and related expenses on behalf of another person (*e.g.,* an institution), the person collecting or receiving payments must satisfy the information reporting requirements of this section. In this case, the reporting requirements do not apply to the transfer of the payments to the institution.

(ii) *Exception.* If the person collecting or receiving payments of qualified tuition and related expenses on behalf of another person (e.g., an institution) does not possess the information needed to comply with the information reporting requirements of this section, the other person must satisfy the information reporting requirements of this section.

(3) *Governmental units.* An institution or insurer that is a governmental unit, or an agency or instrumentality of a governmental unit, is subject to the information reporting requirements of this section and an appropriately designated officer or employee of the governmental entity must satisfy the information reporting requirements of this section.

(e) *Penalty provisions*—(1) *Failure to file correct returns.* The section 6721 penalty may apply to an institution or

insurer that fails to file information returns required by section 6050S and this section on or before the required filing date; that fails to include all of the required information on the return; or that includes incorrect information on the return. See section 6721, and the regulations thereunder, for rules relating to penalties for failure to file correct returns. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(2) *Failure to furnish correct information statements.* The section 6722 penalty may apply to an institution or insurer that fails to furnish statements required by section 6050S and this section on or before the prescribed date; that fails to include all the required information on the statement; or that includes incorrect information on the statement. See section 6722, and the regulations thereunder, for rules relating to penalties for failure to furnish correct statements. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(3) *Waiver of penalties for failures to include a correct TIN*—(i) *In general.* In the case of a failure to include a correct TIN on Form 1098–T or a related information statement, penalties may be waived if the failure is due to reasonable cause. Reasonable cause may be established if the failure arose from events beyond the institution's or insurer's control, such as a failure of the individual to furnish a correct TIN. However, the institution or insurer must establish that it acted in a responsible manner both before and after the failure.

(ii) *Acting in a responsible manner.* An institution or insurer must request the TIN of each individual for whom it is required to file a return if it does not already have a record of the individual's correct TIN. If the institution or insurer does not have a record of the individual's correct TIN, then it must solicit the TIN in the manner described in paragraph (e)(3)(iii) of this section on or before December 31 of each year during which it receives payments, or bills amounts, for qualified tuition and related expenses or makes reimbursements, refunds, or reductions of such amounts with respect to the individual. If an individual refuses to provide his or her TIN upon request, the institution or insurer must file the return and furnish the statement required by this section without the individual's TIN, but with all other required information. The specific solicitation requirements of paragraph (e)(3)(iii) of this section apply in lieu of the solicitation requirements of § 301.6724–1(e) and (f) of this chapter for the purpose of determining whether an institution or insurer acted in a responsible manner in attempting to obtain a correct TIN. An institution or insurer that complies with the requirements of this paragraph (e)(3) will be considered to have acted in a responsible manner within the meaning of § 301.6724–1(d) of this chapter with respect to any failure to include the correct TIN of an individual on a return or statement required by section 6050S and this section.

(iii) *Manner of soliciting TIN.* An institution or insurer must request the individual's TIN in writing and must clearly notify the individual that the law requires the individual to furnish a TIN so that it may be included on an information return filed by the institution or insurer. A request for a TIN made on Form W–9S, ''Request for Student's or Borrower's Social Security Number and Certification,'' satisfies the requirements of this paragraph (e)(3)(iii). An institution or insurer may establish a system for individuals to submit Forms W–9S electronically as described in applicable forms and instructions. An institution or insurer may also develop a separate form to request the individual's TIN or incorporate the request into other forms customarily used by the institution or insurer, such as admission or enrollment forms or financial aid applications.

(4) *Failure to furnish TIN.* The section 6723 penalty may apply to any individual who is required (but fails) to furnish his or her TIN to an institution or insurer. See section 6723, and the regulations thereunder, for rules relating to the penalty for failure to furnish a TIN.

(f) *Effective date.* The rules in this section apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

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

Par. 5. Section 301.6011–2 is amended by:

1. In paragraph (b)(1), first sentence, add the language ''1098–T,'' immediately after the language ''1098–E,''.

2. Revising paragraph (g)(3).

The revision reads as follows:

§ 301.6011–2 Required use of magnetic media.

* * * * *

(g) * * *

(3) This section applies to returns on Forms 1098–E and 1098–T filed after December 31, 2003.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–9932 Filed 4–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

[Department of the Treasury Circular, Public Debt Series No. 1–93]

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds; Reporting of Net Long Position and Application of the 35 Percent Limit

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Treasury (''Treasury,'' ''We,'' or ''Us'') is issuing this Advance Notice of Proposed Rulemaking to solicit comments on potential modifications to the timing of the calculation and reporting of the net long position (''NLP'') in marketable Treasury securities auctions. In addition, we are asking for comments on the application of the 35 percent award limit and on a potential change in the NLP reporting threshold. The purpose of any such modifications would be to more effectively meet the objectives of these two areas of the auction rules while ensuring that participation in Treasury securities auctions remains both strong and broad, with minimal compliance costs for participants. Realization of these goals will help us attain the lowest possible borrowing costs over time. We are specifically interested in comments on alternatives that change the time as of which the NLP is calculated (the ''NLP as-of time'') and the NLP reporting deadline, as well as alternatives that would permit us to replace or eliminate the NLP reporting requirement.

DATES: Submit comments on or before June 28, 2002.

ADDRESSES: You may send hard copy comments to: Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street NW., Room 315, Washington, DC 20239. You may also

send us comments by e-mail at *govsecreg@bpd.treas.gov.* When sending comments by e-mail, please use an ASCII file format and provide your full name and mailing address. You may download this advance notice, and review the comments we receive, from the Bureau of the Public Debt's website at *www.publicdebt.treas.gov.* The advance notice and comments will also be available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Executive Director), Chuck Andreatta (Senior Financial Advisor), or Lee Grandy (Associate Director), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691–3632.

SUPPLEMENTARY INFORMATION: The Uniform Offering Circular,[1] in conjunction with the offering announcement for each auction, provides the terms and conditions for the sale and issuance of marketable Treasury bills, notes and bonds to the public. One of these terms (rules) is the requirement that a bidder in an auction report its net long position (''NLP'') if its NLP in the security being auctioned plus its bids in the auction meet or exceed a certain dollar-amount threshold stated in the auction offering announcement. The reporting dollar-amount threshold currently is $1 billion for Treasury bills and $2 billion for Treasury notes and bonds. Currently, a bidder must determine its NLP as of one-half hour prior to the deadline for receipt of competitive bids; if it meets or exceeds the reporting threshold as of that time, the bidder must report its NLP by the competitive bidding deadline.

A bidder's reported NLP is a component of our auction award limit, which is 35 percent of the offering amount less the bidder's reported NLP. For example, assume a bidder has an NLP of $2 billion, and the 35 percent award limit for a particular auction is $4 billion. If the bidder is successful in the auction and as a result of its bids alone would receive $4 billion, its award will be cut back to $2 billion.

In this notice, we first describe these rules and their rationale, and why we are considering a change. Then we describe various alternatives on which we are seeking comment.

[1] The Uniform Offering Circular was published as a final rule on January 5, 1993 (58 FR 412). The circular, as amended, is codified at 31 CFR part 356.

I. The 35 Percent Limit and Net Long Position Reporting

The 35 percent rule limits auction awards for any one competitive bidder to 35 percent of the total amount offered to the public in a particular auction, less the bidder's reported NLP.[2] This rule ensures that awards in our auctions are distributed to a number of auction participants. This goal of broad distribution is intended to encourage participation by a significant number of competitive bidders in each auction. Broad participation keeps our borrowing costs to a minimum, helps ensure that Treasury auctions are fair and competitive, and makes it less likely that ownership of Treasury securities will become overly concentrated.

A key component of the 35 percent award limit is the NLP calculation.[3] If a bidder has a reportable NLP, we subtract it from the 35 percent award limit in determining the bidder's maximum award amount for the auction.

The NLP is generally the amount of the security being auctioned that a bidder has obtained, or has arranged to obtain, outside of the auction in the secondary market. The term ''net long'' refers to the extent to which an investor has bought (or has agreed to buy) more of a security than it has sold (or has agreed to sell). For example, if an investor has bought $900 million of a security in the when-issued market, and it has sold $300 million of the same security in the when-issued market, it has a net long position of $600 million in that security, assuming it has no other positions. The components of the NLP are intended to capture the various ways that a bidder can acquire a Treasury security.[4]

A competitive bidder is required to report its NLP if the sum of its bids plus its NLP equals or exceeds the NLP reporting threshold, currently $2 billion for Treasury notes and bonds and $1 billion for Treasury bills[5] (unless otherwise stated in the offering announcement). In addition, if the sum of its bids equals or exceeds the NLP reporting threshold, but it has no position or has a net short position, it must report a zero.

A bidder must determine its NLP as of one-half hour (*e.g.,* 12:30 p.m.) prior to the competitive bidding deadline (*e.g.,* 1 p.m.).[6] This is a ''snapshot'' or point-in-time measurement. If a bidder's position changes during the final half-hour period before the auction, this does not affect the amount to be reported under our rules. Currently, we give bidders 30 minutes to calculate and report their NLPs primarily because of the operational complexities involved in aggregating this information when a bidder has numerous affiliates.

The NLP reporting requirement is not fully effective in encouraging broad distribution of Treasury securities, however, because of this half-hour time lag between the NLP as-of time and the competitive bidding deadline. Because a bidder's NLP can change significantly during this time period, the reported NLP may not provide an accurate, or even approximate, measure of a bidder's position at the time that a bidder actually submits its bids. As a result, a bidder's award may be cut back to the 35 percent limit based on NLP information that no longer reflects the bidder's actual NLP. Conversely, a bidder's award may not be cut back if it builds a large position in the security being auctioned between the NLP as-of time and the competitive bidding deadline.

Moreover, our experience with the NLP rule in general is that participants occasionally have operational difficulties in compiling and reporting NLPs. There may be other ways to achieve the goals of the rule while reducing these difficulties. For this reason, we are also more fundamentally reconsidering the rule.

We asked the Treasury Borrowing Advisory Committee of The Bond Market Association [7] to consider an alternative to address this issue in January 2002. The alternative was to separate NLP reporting from auction bidding by having bidders determine their NLPs as of the competitive bidding deadline, usually 1 p.m., and report them after the close of the auction. Under this scenario, Treasury would base its auction awards solely on the amounts bid, and bidders would be responsible for ensuring that their bids, combined with their NLPs, did not result in their exceeding the 35 percent award limit.

The Committee responded that this alternative, ''while somewhat more burdensome to the bidder,'' was ''manageable practically,'' but was concerned about shifting the burden of

[2] 31 CFR 356.22(b).

[3] 31 CFR 356.13.

[4] See 31 CFR 356.13(b) for details on the components of the net long position. See also 66 FR 56759 (November 13, 2001), which provided an optional exclusion amount in the NLP calculation for reopenings.

[5] 31 CFR 356.13(a).

[6] 31 CFR 356.13(b).

[7] The Committee, which is comprised of securities industry representatives, provides periodic advice to Treasury on debt management issues. See, Pub. L. 103–202, Sec. 202, 107 Stat. 2356, 31 U.S.C. 3121 note.

enforcing the 35 percent award limit from the Treasury to bidders. Under this ''self policing'' scenario, the Committee contended, bidders would be likely to reduce the amount of their auction bids leading to smaller bid/cover ratios and possibly weaker auction results.[8]

We also invited suggestions from the public during the February 2002 quarterly refunding announcement on ways to improve the NLP rule.[9] In addition to separating the NLP reporting from auction bidding, we stated that we were also considering moving the NLP as-of time closer to the competitive bidding deadline.

We received one response on this topic, from The Bond Market Association.[10] The Association recommended, among other things, that Treasury refrain from making any major modifications to the current NLP reporting requirements. Nevertheless, the Association suggested that we consider three relatively ''minor'' rule changes: ''(i) increasing the current NLP reporting threshold to 35 percent of the issuance amount; (ii) requiring bidders to calculate their NLP as of 12:40 p.m. rather than 12:30 p.m.; and (iii) instructing bidders not to report any NLP when they are above the applicable reporting threshold but their NLP is either zero or a negative number.'' We also received other responses, but not on this topic.

II. Alternatives

We are considering, and inviting public comments on, four alternatives to reach our goal of maintaining strong and broad participation in fair and competitive Treasury auctions while minimizing the costs of compliance with the auction rules. Realization of this goal will help us attain the lowest possible borrowing costs over time. In addition, we are inviting comments on potential changes to the NLP reporting threshold amount.

Substantive rule changes (timing or fundamental). The first two alternatives maintain the requirement to report the NLP, but modify the time that it must be determined or reported, or both, to make the reporting process more effective. The third alternative would eliminate the NLP reporting requirement, and the last would keep it as it is.

Alternative 1. Reduce the half-hour interval between the NLP as-of time and the competitive bidding deadline. For example, would the NLP reporting rule be more effective if the as-of time were moved closer to the competitive bidding deadline (e.g., 1:00), such as 12:40 or 12:45? Would this modification be feasible operationally? We specifically invite comments on the optimal NLP determination time.

Alternative 2. Make the NLP as-of time the same as the competitive bidding deadline, with the NLP reporting time to follow (for example, one-half hour later). Bidders would be responsible for ensuring that their bids plus their positions, if they are net long, do not exceed the 35 percent award limit. For example, the NLP as-of time and the competitive bidding deadline could both be set at 1:00, with NLPs to be reported by 1:30. Violations of the rule could be handled as follows. First, to encourage aggressive bidding and to alleviate bidder concerns about accidental breaches of the NLP rule, in the case of most minor or technical errors there would be minimal or no sanction. Second, we would promulgate a new rule to handle more serious rule violations, namely those with a potential impact on the liquidity of the Treasury securities market (e.g., significantly exceeding the 35 percent limit). The NLP rule is premised on the conviction that one bidder's taking the bulk of an auction may discourage other bidders from bidding aggressively in future auctions, or even from bidding at all. In either case, the liquidity of Treasury securities would diminish, and Treasury's long-term borrowing costs would rise. This new rule would allow us to impose liquidated damages based on Treasury's increased borrowing costs. Third, in the case of the most serious violations, Treasury would employ existing enforcement mechanisms prohibiting the bidder from participating in future auctions for its own account, for the account of others, or both,[11] as well as pursuing criminal and civil remedies under the Federal securities and other laws.

Alternative 3. Eliminate the NLP reporting requirement, and either maintain or reduce the 35 percent limit. Treasury would rely on its Large Position Reporting rules,[12] and other mechanisms to monitor the market and address concentrations of ownership. This would reduce the operational difficulties and burdens bidders face in reporting their NLPs near the same time that they also are determining the amounts and yields at which they are bidding. The downside for the Treasury market (and thus ultimately for the taxpayer) would be a more limited ability for Treasury to control ownership concentration in the Treasury market through the auction process.

Alternative 4. Retain both the 35 percent limit and the NLP as-of and reporting timeframes as they exist now.

Potential change to NLP reporting threshold amount. Currently a bidder must report its NLP if its bids plus its NLP equals or exceeds $1 billion for bills, or $2 billion for notes and bonds (unless otherwise stated in the auction offering announcement).[13] As noted above, if a bidder either has no position or has a net short position but the total of all of its bids equals or exceeds the NLP threshold amount for a particular auction, the bidder must report a zero as its NLP.

We are considering changing the NLP reporting threshold to equal the actual 35 percent award limit for each auction, which we would provide on the offering announcement. Bidders whose bids plus NLPs equal or exceed the limit would be required to report their positions. For example, if the 35 percent award limit for a particular auction is $3 billion, and the total of a bidder's bids is $2.5 billion and its NLP is $1 billion, the bidder would have to report its $1 billion NLP. Bidders whose bids plus NLPs did not equal or exceed the limit would not be required to report any positions. Bidders whose total bids equal or exceed the limit but either have no position or a net short position would not have to report a zero as their NLP. We are requesting comment on this alternative because we are considering making this change regardless of whether or not we implement any modifications to the NLP as-of or reporting timeframes.

In addition to inviting comments on all of the above alternatives, we also invite comments on any other alternatives.

It has been determined that this is not a significant regulatory action for purposes of Executive Order 12866.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government Securities, Securities.

Authority: 5 U.S.C. 301; 31 U.S.C. 3102 *et seq.*; 12 U.S.C. 391.

[8] Report to the Secretary of the Treasury from the Treasury Borrowing Advisory Committee of The Bond Market Association (dated January 30, 2002). The report is available at www.treas.gov. See also Minutes of the Meeting of the Treasury Borrowing Advisory Committee of The Bond Market Association (January 29, 2002).

[9] February 2002 Quarterly Refunding Statement (January 30, 2002).

[10] Letter from Eric L. Foster, Vice President and Assistant General Counsel, The Bond Market Association, to Brian C. Roseboro, Assistant Secretary for Financial Markets, dated March 13, 2002. The letter comments on some of the alternatives in this notice. It is available on The Bond Market Association website at www.bondmarkets.com.

[11] 31 CFR 356.34(a).

[12] 17 CFR 420.

[13] 31 CFR 356.13(a).

Dated: April 24, 2002.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 02–10547 Filed 4–25–02; 10:29 am]

BILLING CODE 4810–39–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–016]

RIN 2115–AA97

Safety and Security Zones; Boston, Massachusetts Captain of the Port Zone, Boston and Salem Harbors, MA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing safety and security zones around vessels when they are moored at the Black Falcon Terminal, Boston, MA and the P G & E Power Plant Terminal, Salem, MA. We are also proposing continuous safety and security zones around the Coast Guard Integrated Support Command (ISC) Boston, MA. These safety and security zones would prohibit entry into or movement within portions of Boston and Salem Harbors and are needed to ensure public safety and prevent sabotage or terrorist acts against facilities and vessels with the potential for catastrophic damage and casualties if successful.

DATES: Comments and related materials to reach the Coast Guard on or before May 29, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dave Sherry, Marine Safety Office Boston, Maritime Security Operations Division, at (617) 223–3030.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD1–02–016), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

The terrorist attacks on New York, New York and Washington, DC on September 11, 2001, inflicted catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. Following the September 11 attacks, we published a temporary rule in the **Federal Register** September 27, 2001 (66 FR 49280), establishing temporary anchorage grounds, regulated navigation areas, and safety and security zones in the Boston, Massachusetts Marine Inspection Zone and Captain of the Port Zone. These measures were taken to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts.

We published a notice of proposed rulemaking (NPRM) on February 27, 2002 (67 FR 8915), proposing to make permanent three of the safety and security zones established by the September 27 temporary rule, and to make the safety and security zones around the Distrigas Liquefied Natural Gas Facility effective for an additional period. That NPRM provided for a short comment period, which would have allowed the zones to be effective on March 16, 2002. This short comment period was intended to prevent any lapse in protective measures provided by the temporary rule. The comment period for that proposed rule did not allow adequate time for public comment.

In order to provide additional time for public comment, the Coast Guard extended the effective period of four of the safety and security zones established in September 2001—namely those zones around Coast Guard Integrated Support Command, Boston, the PG & E Power Plant in Salem, MA, in the Reserved Channel, Boston, MA, and the Distrigas Liquefied Natural Gas Facility in Everett, Massachusetts—until June 30, 2002. That extension was published March 15, 2002 (67 FR 11577). The regulated navigation areas and anchorage ground established in September 2001 expired as scheduled on March 15, 2002. In response to comments already received, the Coast Guard is amending the parameters of the proposed safety and security zones, as discussed in the *Discussion of Comments* section below. The safety and security zones proposed at the Distrigas Facility are being incorporated into a separate rulemaking, and are therefore no longer proposed in this supplemental notice of proposed rulemaking (SNPRM).

The Coast Guard proposes to establish permanent safety and security zones in Boston and Salem Harbors as part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities from sabotage or terrorist acts. Due to continued heightened security concerns, permanent safety and security zones in Boston and Salem Harbor are prudent to provide for the safety of the port, the facilities, and the public. This proposed rule would establish three pairs of safety and security zones having identical boundaries, around Coast Guard Integrated Support Command, Boston, the PG & E Power Plant in Salem, MA, and in the Reserved Channel, Boston, MA.

These zones would restrict entry into or movement within portions of Boston and Salem Harbor. These zones are deemed necessary due to the vulnerable nature of these locations as possible targets of terrorist attack. Entry into or movement within these safety and security zones is prohibited unless authorized by the Captain of the Port, Boston. Mariners may request entry into these safety and security zones from the Coast Guard representative on scene.

The Captain of the Port anticipates some impact on vessel traffic due to this proposed regulation. However, the impact would be minimal, and the safety and security zones are deemed necessary for the protection of life and property within the COTP Boston zone.

No person or vessel would be allowed to remain in the proposed safety and security zones at any time without the

permission of the Captain of the Port, Boston, MA. Each person or vessel in the proposed safety and security zone must obey any direction or order of the Captain of the Port, Boston, MA. The Captain of the Port, Boston, MA may take possession and control of any unauthorized vessel in the proposed safety and security zone and/or remove any unauthorized person, vessel, article or thing from the proposed safety and security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in the proposed safety and security zone without permission of the Captain of the Port, Boston, MA.

Any violation of the proposed safety or security zone described herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions. This regulation is proposed under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225, and 1226.

Discussion of Comments and Changes to the Proposed Rule

The Coast Guard received three comments from the public regarding the NPRM published in February 2002. All comments received were considered, and have contributed to us amending the proposed zones in this SNPRM. The public comments received addressed the burden the zones pose on the fishing and recreational boating communities, the effective times of the zones, and property located inside the zones.

Based on the comments received, the Coast Guard has determined that the dimensions of the proposed zones are too large, would unreasonably impact the public, and would be difficult to adequately enforce. The Coast Guard proposes to amend their sizes. The comments and proposed changes are:

I. Burden on the Boating Community

The Coast Guard received comments expressing concern over the potential negative impacts this proposal would have on the fishing and recreational boating communities. The comments stated that the zones might unduly restrict the movement of fishing vessels to and from their home piers and their placement of fixed fishing gear.

In addition, the zones were perceived to unduly restrict the movement of recreational mariners to and from their home marinas. At the same time, the Coast Guard determined the size of the zones may be excessive in terms of providing adequate protection, and would also make enforcement difficult. As a result, the Coast Guard has modified the zones it proposed in February to minimize the impact these zones would have on the recreational boating and fishing communities, and to facilitate enforcement.

II. Why Must This Regulation Be in Effect at All Times?

The Coast Guard received comments seeking to make the proposed regulation in effect ''only at times of high risk.'' ''High risk'' periods may not always be predictable by the public or the Coast Guard. Having the regulation in effect at all times provides maximum flexibility to respond to changing threat conditions. In addition, making the regulation effective only at certain times with regards to ''high risk'' periods can cause confusion among the public. Thus the Coast Guard still proposes to make this regulation effective at all times. However, the time that two of the three safety and security zones under the proposed regulation would be in use would be sporadic—only at times vessels are moored at Black Falcon and Salem PG & E Generating power plant terminals. The Coast Guard may allow access into any of the three zones if no safety or security risks are present.

III. How Would This Proposed Rule Affect Property Inside the Proposed Zones?

The Coast Guard received comments from waterfront facilities and pier owners located inside the proposed zone areas concerned with how the zone would affect their property and business inside the zones. The Captain of the Port does not seek to restrict use of public or private lands within the boundaries of these proposed zones. The Captain of the Port would allow entities in fixed locations within the proposed zone boundaries to continue their normal operations; with the caveat that this permission may be modified if a security risk is identified on property within the zone.

IV. Resulting Changes

As a result of the comments received and interagency review, we propose changes to the safety and security zones in our NPRM published February 21, 2002. Where paragraph 165.115 (a)(1) was proposed to read: All waters of Boston Harbor, including the Reserved Channel, west of a line connecting the Southeastern tip of the Black Falcon pier and the Northeastern corner of the Paul W. Conley Marine Terminal pier; it is proposed to now read: All waters within 150 yards off the bow and stern and 100 yards abeam of any vessel moored at the Massachusetts Port Authority Black Falcon Terminal. The intent of this portion of the regulation is to protect vessels at the Black Falcon Terminal. These new proposed boundaries and criteria provide adequate protection while minimizing the impact this zone would have on the recreational boating and fishing communities.

Where paragraph 165.115 (a)(2) was proposed to read: All waters of Boston Inner Harbor within a 200-yard radius of Pier 2 at the Coast Guard Integrated Support Command Boston, Boston, MA; it is proposed to now read: All waters of Boston Harbor within 100 feet of the Coast Guard Integrated Support Command (ISC) Boston piers. This change still provides adequate protection and was made to allow marine traffic adequate space outside the zones to safely transit to and from the Charles River.

Where paragraph 165.115 (a)(3) was proposed to read: All waters of Salem Harbor within a 500-yard radius of the PG & E Generating power plant pier in Salem, MA; it is proposed to now read: All waters of Salem Harbor within a 250-yard radius of the center point of the Salem Terminal Wharf located at 42°31.33′ N, 070°52.67′ W when a vessel is moored at the PG & E terminal. The intent of this portion of the regulation is to protect vessels at the PG & E Terminal. This change was made to accommodate this intent and allow mariners adequate space outside the zones to safely transit to the south and east of the zone.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this proposed rule to be minimal enough that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposed rule would impose zero mandatory costs. The effect of this proposed regulation would not be significant for several reasons: The proposed zones would prohibit movement in small portions of Boston

and Salem Harbors, allowing ample room for vessels to navigate around the zones and advance notifications would be made to the local maritime community via marine information broadcasts and Local Notice to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit, anchor, or conduct commercial fishing operations in a portions of Boston and Salem Harbor. These sections of Boston and Salem Harbor do not restrict passenger and commuter vessel routes, do not unduly restrict recreational boat traffic, and are so small they would have a negligible impact on the commercial fishing industry. For these and the reasons enumerated in the Regulatory Evaluation section above, these safety and security zones would not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this proposed rule and you have questions concerning its provisions or options for compliance, please call Lieutenant Dave Sherry, Marine Safety Office Boston, at (617) 223–3030. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

The Coast Guard analyzed this proposed rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.115 to read as follows:

§ 165.115 Safety and Security Zones: Salem and Boston Harbors, Massachusetts.

(a) *Location.* The following areas are safety and security zones:

(1) All waters within 150 yards off the bow and stern and 100 yards abeam of any vessel moored at the Massachusetts Port Authority Black Falcon Terminal.

(2) All waters of Boston Harbor within 100 feet of the Coast Guard Integrated Support Command (ISC) Boston piers and;

(3) All waters of Salem Harbor within a 250-yard radius of the center point of

the Salem Terminal Wharf located at 42°;31.33′ N, 070°52.67′ W when a vessel is moored at the PG & E Power Plant Terminal.

(b) *Effective date.* This section becomes effective July 1, 2002.

(c) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP) Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

(3) No person may enter the waters or land area within the boundaries of the safety and security zones unless previously authorized by the Captain of the Port, Boston or his authorized patrol representative.

Dated: April 11, 2002.

B.M. Salerno,

Captain, U. S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–10471 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–925, MB Docket No. 02–81, RM–10422]

Digital Television Broadcast Service; Bethlehem, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Sonshine Family Television, Inc., licensee of station WBPH–TV, NTSC channel 60, Bethlehem, Pennsylvania, proposing the substitution of DTV channel 9 for station WBPH–TV's assigned DTV channel 59. DTV Channel 9 can be allotted to at reference coordinates 40–33–52 N. and 75–26–24 W. with a power of 3.2, a height above average terrain HAAT of 284 meters. However, since the community of Bethlehem is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before June 17, 2002, and reply comments on or before July 2, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: J. Geoffrey Bentley, Bentley Law Office, P.O. Box 710207, Herndon, Virginia 20171 (Counsel for Sonshine Family Television, Inc.).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–81, adopted April 22, 2002, and released April 26, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Pennsylvania is amended by removing DTV channel 59c and adding DTV channel 9 at Bethlehem.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–10476 Filed 4–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–926, MB Docket No. 02–82, RM–10408]

Digital Television Broadcast Service; Burlington, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by C–22 FCC Licensee Subsidiary, LLC, licensee of station WVNY–TV, proposing the substitution of DTV channel 13 for station WVNY–TV's assigned DTV channel 16 at Burlington. DTV Channel 13 can be allotted to Burlington at reference coordinates (44–31–40 N. and

72–48–58 W.) with a power of 4.5, a height above average terrain HAAT of 835 meters. Since the community of Burlington is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before June 17, 2002, and reply comments on or before July 2, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gregory L. Masters, Wiley, Rein & Fielding, LLP, 1776 K Street, NW., Washington, DC 20006 (Counsel for C–22 FCC Licensee Subsidiary, LLC).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–82, adopted April 22, 2002, and released April 26, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Vermont is amended by removing DTV channel 16 and adding DTV channel 13 at Burlington.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–10477 Filed 4–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–927, MB Docket No. 02–83, RM–10404]

Digital Television Broadcast Service; Sault Saint Marie, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Scanlan Television, Inc., licensee of station WGTQ–TV, NTSC channel 8, Sault Saint Marie, Michigan, proposing the substitution of DTV channel 9 for station WGTQ–TV's assigned DTV channel 56. DTV Channel 9 can be allotted to Sault Saint Marie at reference coordinates 46–03–08 N. and 84–06–38 W. with a power of 24, a height above average terrain HAAT of 291 meters. Since the community of Sault Saint Marie is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian Government must be obtained for this allotment.

DATES: Comments must be filed on or before June 17, 2002, and reply comments on or before July 2, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Kevin C. Boyle, Latham & Watkins, 555 Eleventh Street, Suite 1000, Washington, DC 20004 (Counsel for Scanlan Television, Inc.).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–83, adopted April 22, 2002, and released April 26, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Michigan is amended by removing DTV channel 56 and adding DTV channel 9 at Sault Saint Marie.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–10478 Filed 4–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–928, MB Docket No. 02–84, RM–10339]

Digital Television Broadcast Service; San Mateo, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by San Mateo County Community College District, licensee of noncommercial station KCSM–TV, NTSC channel *60, San Mateo, California, requesting the substitution of DTV channel *43 for DTV channel *59 at San Mateo. DTV Channel *43 can be allotted to San Mateo, California, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 37–45–19 N. and 122–27–06 W. As requested, we propose to allot DTV Channel *43 to San Mateo with a power of 1000 and a height above average terrain (HAAT) of 444 meters.

DATES: Comments must be filed on or before June 17, 2002, and reply comments on or before July 2, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Margaret L. Tobey, Morrison and Foerster LLP, 2000 Pennsylvania Avenue, NW, Suite 5500, Washington, DC 20006 (Counsel for San Mateo County Community College District).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–84, adopted April 22, 2002, and released April 26, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under California is amended by removing DTV

Channel *59 and adding DTV Channel *43 at San Mateo.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–10479 Filed 4–26–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 571, 574 and 575

[Docket No. NHTSA–00–8011]

RIN 2127–AI54

Federal Motor Vehicle Safety Standards; Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Extension of comment period.

SUMMARY: NHTSA has received a petition asking the agency to extend the comment period for its proposal to establish new and more stringent tire performance requirements in a new Federal motor vehicle safety standard. The standard would apply to all new tires for use on vehicles with a gross vehicle weight rating of 10,000 pounds or less. In the proposal, NTHSA established a deadline for the submission of written comments of May 6, 2002. In light of that petition and the need to ensure that all interested parties have a sufficient amount of time to fully develop their comments, the agency is extending the deadline for the submission of written comments.

DATES: Written comments must be received by June 5, 2002.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT:

For technical and policy issues: Mr. George Soodoo or Mr. Joseph Scott, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366–2720. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC, 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: The agency issued the notice of proposed rulemaking pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Pub. L. 106–414. The NPRM was published on Tuesday, March 5, 2002 (67 FR 10050). Section 10 of the Act directs the Secretary of Transportation to conduct a rulemaking to revise and update the tire safety standards published at 49 CFR 571.109 and 571.119, and to complete the rulemaking, i.e., issue a final rule, by June 1, 2002.

The Rubber Manufacturers Association, which represents manufacturers of finished rubber products, including tire manufacturers, has petitioned for an extension of the comment period on the notice of proposed rulemaking (NPRM). RMA said that it was requesting an extension so that it can complete the testing contemplated in a test matrix it has designed to generate data that will enable it to analyze tire temperature as a function of load, inflation pressure and speed relationships and so that it can then evaluate the results of that testing. The RMA's petition and its test matrix have been submitted to the above-mentioned docket.

In considering the extension request, NHTSA weighed the statutory deadline, the complexity and importance of this rulemaking, and the basis for the request. The agency does not wish to inhibit the ability of any party to fully develop useful technical information and seeks to provide additional time for all interested parties to prepare and submit useful information. Consequently, NHTSA believes that it is in the best interest of all parties involved to extend the period for the submission of written comments in this proceeding to June 5, 2002.

However, given the statutory deadline, NHTSA wishes to note that it does not anticipate granting any further extensions of the comment period in this proceeding. Please note also that the agency will consider comments submitted after June 5, 2002, only to the extent that it is possible to do so without causing additional expense or delay.

Issued: April 23, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–10406 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 041802D]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS has made a preliminary determination that an application to issue an EFP to one vessel submitted by the Mount Desert Oceanarium of Southwest Harbor, ME contains all the information required by the regulations governing exempted experimental fishing under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and warrants further consideration.

The exemption would allow one fishing vessel to fish for, retain and land small numbers of regulated multispecies, monkfish, spiny dogfish, and several unmanaged species for the purpose of public display. NMFS has made a preliminary determination that the activities authorized under this EFP would be consistent with the goals and objectives of the Fishery Management Plans (FMPs) for these species. However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that it intends to issue an EFP that would allow one vessel to conduct fishing operations otherwise restricted by the regulations governing fisheries of the northeastern United States.

Regulations under the Magnuson-Stevens Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs (see 50 CFR 600.745).

DATES: Comments on this notification must be received at the appropriate

address or fax number (see **ADDRESSES**) on or before May 14, 2002.

ADDRESSES: Comments should be sent to Patricia Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope ''Comments on Exempted Fishing Permit Application.''

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 978–281–9104.

SUPPLEMENTARY INFORMATION: The Mount Desert Oceanarium of Southwest Harbor, ME submitted an application for an EFP on March 11, 2002 to collect several species of fish for public display. The target species would include winter flounder (blackbacks), witch flounder (dabs), yellowtail flounder, American plaice (grey sole), Atlantic halibut, monkfish, eel pouts, sculpins, sea ravens, Atlantic cod, wolfish, spiny dogfish, little skate, barndoor skate, and various species of the Phyla Arthropoda (not including lobsters) and several species of Echinodermata.

A single chartered vessel would use a shrimp trawl with 2–inch (5.08-cm) mesh to collect marine fish over a 3–day period from May 7, 2002, through May 27, 2002. The specimens would be cared for in chilled and aerated seawater while on board the fishing vessel and would be transferred live to tanks the day they are caught. They would then be brought to shore, maintained in tanks for public display for a period of time not to exceed 5 months and returned to the sea in October 2002.

Collection would be made using a 2-inch (5.08-cm) mesh shrimp net within the Small Mesh Northern Shrimp Fishery Exemption Area (Area) off Maine. Since the shrimp fishery would be closed at the time of collection, an exemption from the Northeast multispecies minimum mesh regulation of 6–inch (15.24–cm) diamond/6.5–inch (16.51–cm) square mesh at 50 CFR 648.80(a)(2) for vessels operating in the Area would be required. If the target species cannot be located in the Area, an exemption from the Northeast multispecies minimum mesh regulation of 6-inch (15.24–cm) diamond/6.5-inch (16.51–cm) square mesh at 50 CFR 648.80(a)(2) would be required to allow collection farther east and southeast in portions of the Gulf of Maine/Georges Bank Regulated Mesh Area.

In addition, the applicant has requested exemptions from monkfish and multispecies days-at-sea requirements at 50 CFR 648.92 and 648.82. The target species would include winter flounder (blackbacks), witch flounder (dabs), yellowtail flounder, American plaice (grey sole), Atlantic halibut, monkfish, eel pouts, sculpins, sea ravens, Atlantic cod, wolfish, spiny dogfish, little skate, barndoor skate, and several species of the Phyla Arthropoda (excluding lobsters) and Echinodermata.

The applicant would retain a maximum of six fish per species, juveniles and adults combined. The applicant has requested exemption from minimum fish sizes and possession limits at 50 CFR 648.83, 648.86, 648.89, 648.93, 648.94 (multispecies and monkfish fisheries), 648.103, 648.105 (summer flounder fishery), 648.124, 648.125 (scup fishery), and 648.143, 648.145 (black sea bass fishery).

Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Based on the results of this EFP, this action may lead to future rulemaking.

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

Dated: April 23, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–10489 Filed 4–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 042202D]

Atlantic Highly Migratory Species; Sea Turtle and Whale Protection Measures; Fishing Vessel Permits; Charter Boat Operations

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

ACTION: Notice of public hearings; extension of comment period; request for comments.

SUMMARY: NMFS will hold four public hearings to receive comments from fishery participants and other members of the public on two proposed rules. The first would implement sea turtle and whale protection measures for the bottom longline, pelagic longline, and shark gillnet fisheries for Atlantic highly migratory species (HMS). The comment period on this proposed rule is extended to May 20, 2002, to coincide with the comment period of the supporting Draft Supplemental Environmental Impact Statement (DSEIS) issued for the rule. The second proposed rule would amend the consolidated regulations governing the Atlantic HMS fisheries to define operations and regulations for HMS Charter/Headboats (CHBs), require an Atlantic HMS recreational permit, adjust the timeframe for permit category changes for Atlantic HMS and Atlantic tunas permits, clarify the regulations regarding the retention of Atlantic bluefin tuna (BFT) in the Gulf of Mexico by recreational and HMS CHB vessels, and clarify NMFS' authority to set different BFT recreational fishing retention limits by vessel type (e.g., charter boats, headboats). To accommodate people unable to attend a hearing or wishing to provide written comments, NMFS also solicits written comments on these proposed rules.

DATES: See **SUPPLEMENTARY INFORMATION** for hearing dates and times.

Written comments on the proposed rule implementing protection measures for sea turtles and whales must be received no later than 5 p.m., eastern standard time, on May 20, 2002, which was extended from May 10, 2002.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for hearing locations.

For copies of the proposed rule implementing protection measures for sea turtles and whales and the DSEIS contact Tyson Kade or Margo Schultze-Haugen at 301–713–2347, or write to Christopher Rogers.

For copies of the proposed rule on CHB and recreational HMS permits, contact Brad Mchale or Pasqulae Scida at 978–281–9260.

Written comments on these proposed rules should be sent to Christopher Rogers, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to 301-713-1917. Comments will not be accepted if submitted via e-mail.

FOR FURTHER INFORMATION CONTACT: Tyson Kade and Margo Schulze-Haugen at 301–713–2347 about the sea turtle and whale protection measures and Brad Mchale and Pasquale Scida at 978–281–9260 about CHB and recreational HMS permits.

SUPPLEMENTARY INFORMATION: The proposed regulations that are the subjects of these hearings are necessary to address requirements of the Magnuson-Stevens Fishery Conservation and Management Act and the Endangered Species Act.

A complete description of the sea turtle and whale protection measures and the purpose and need for the

proposed action are contained in the proposed rule, published April 10, 2002 (67 FR 17349), and are not repeated here. Copies of the proposed rule may be obtained by writing (see **ADDRESSES**) or by calling the listed contact person (see **FOR FURTHER INFORMATION CONTACT**).

The proposed rule addressing CHB and recreational HMS permits will publish in the **Federal Register** on April 26, 2002. Upon publication, copies of the proposed rule may be obtained by writing (see **ADDRESSES**) or by calling the listed contact person (see **FOR FURTHER INFORMATION CONTACT**).

Hearing Dates, Times, and Locations

The hearings for these proposed rules will be conducted jointly at the identified locations. NMFS intends to dedicate half of the hearing time to each proposed rule. The public hearing schedule is as follows:

Wednesday, May 8, 2002–Panama City, FL, 7–9 p.m.—NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408

Monday, May 13, 2002–Barnegat Light, NJ, 7–9 p.m.— Barnegat Light Fire House, 10th and Boulevard Street, Long Beach Island, Barnegat Light, NJ 08006

Wednesday, May 15, 2002–Riverhead, NY, 7–9 p.m.— Riverhead Town Hall, 200 Howell Avenue, Riverhead, NY 11901

Friday, May 17, 2002–Silver Spring, MD, 2–4 p.m.—NOAA Science Center, 1301 East-West Highway, Silver Spring, MD 20910

Public Hearings Code of Conduct

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the hearing so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Special Accommodations

The hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tyson Kade (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing.

Authority: 16 U.S.C. 971 *et seq.*, and 16 U.S.C. 1801 *et seq.*

Dated: April 24, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–10487 Filed 4–24–02; 3:20 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020311051–2051–01; I.D. 022002C]

RIN 0648–AN75

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Pelagic Longline Gear Restrictions, Seasonal Area Closure, and Other Sea Turtle Take Mitigation Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule that would implement the reasonable and prudent alternatives of the March 29, 2001, Biological Opinion (BiOp) issued by NMFS under the Endangered Species Act (ESA). This proposed rule is intended to reduce interactions between endangered and threatened sea turtles and pelagic fishing gear and to mitigate the harmful effects of interactions that occur. This proposed rule would apply to the owners and operators of all vessels fishing for pelagic species under Federal western Pacific limited access longline permits (longline vessels) within the exclusive economic zone (EEZ) and the high seas around Hawaii, as well as those fishing for pelagic species with other types of hook and line gear (non-longline pelagic vessels) within the EEZ around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands (the western Pacific region). This proposed rule would prohibit the targeting of swordfish north of the equator by longline vessels, close all longline fishing to longline vessels during April and May in waters south of the Hawaiian Islands (from 15° N. lat. to the equator, and from 145° W. long. to 180° long.), prohibit the landing or possessing of more than 10 swordfish per fishing trip by longline vessels fishing north of the equator, allow the re-registration of vessels to Hawaii longline limited access permits only during the month of October, require all longline vessel operators to annually attend a protected species workshop and, impose sea turtle handling and resuscitation measures on both longline vessels, and non-longline pelagic vessels.

DATES: Comments on this proposed rule must be received no later than 5 p.m., Hawaiian standard time, on May 14, 2002.

ADDRESSES: Written comments on this proposed rule or its Initial Regulatory Flexibility Analysis (IRFA) must be mailed to Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI, 96814–4700; or faxed to 808–973–2941. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the Environmental Impact Statement (EIS), Regulatory Impact Review, and IRFA prepared for this action may be obtained from Dr. Charles Karnella, PIAO. See also *http://swr.nmfs.noaa.gov* to view the EIS.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, at 808–973–2937.

SUPPLEMENTARY INFORMATION: The BiOp concluded that the ongoing operations of the pelagic fisheries of the western Pacific region managed under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP), particularly the Hawaii-based longline fishery, were likely to jeopardize the continued existence of green, leatherback, and loggerhead sea turtles. This conclusion was based on the status of these sea turtle populations, as well as the types and numbers of fishery interactions that occur annually. The majority of interactions are believed to involve Hawaii-based longline vessels and typically are the result of hookings or entanglements with fishing gear that is soaking in the water column. A percentage of these turtles die and others are released alive. Of those released alive, some are injured and released with embedded hooks or trailing gear while others are released unharmed. Historic data (1994–1999) indicate that, on average, this fishery was annually involved in 40 interactions with green sea turtles, 112

interactions with leatherback sea turtles, and 418 interactions with loggerhead sea turtles. For this reason, the BiOp included a series of non-discretionary measures within its reasonable and prudent alternatives that are applicable to Hawaii-based longline vessels and which NMFS implemented as an emergency rule effective June 12, 2001, and subsequently extended on December 10, 2001. Because the Magnuson-Stevens Fishery Conservation and Management Act authorizes the implementation of emergency rules for no more than two consecutive 180–day periods, that emergency rule will expire on June 8, 2002. The entire suite of measures contained in the BiOp's reasonable and prudent alternatives have now been recommended for implementation by the Western Pacific Fishery Management Council, and comprise the measures contained in this proposed rule.

The BiOp also examined the impact of non-longline FMP pelagic hook and line fisheries in the western Pacific region. The known level of effort and the selectivity of gear used in these fisheries led NMFS to conclude that few interactions have historically occurred in these fisheries. However, the BiOp includes non-discretionary measures applicable to these non-longline pelagic fisheries to provide for the protection of sea turtles in any interaction with this fishing gear. These measures require the operators of all hook and line vessels to carry line cutters and bolt cutters on their vessels and to use them to release any hooked turtle or entangled turtle with the least harm possible.

The entire suite of non-discretionary measures contained in the BiOp's reasonable and prudent alternatives was also included in the preferred alternative identified in a final EIS issued by NMFS on March 30, 2001. That EIS provides a comprehensive assessment of the environmental impacts of fishing activities conducted under the FMP on the human environment and provides detailed analysis of a range of management alternatives (see **ADDRESSES**).

The measures in this proposed rule are intended to directly mitigate interactions between sea turtles and longline fishing vessels by ensuring that longline gear used north of the equator is set deeply where it is less likely to be encountered by sea turtles, and by preventing Hawaii-based vessel operators from moving their operations to California or other areas during swordfish season, de-registering their vessels from their Hawaii limited access longline permits, fishing without employing the mitigation measures specified here, and then moving back to Hawaii and re-registering their vessels to take advantage of the Hawaii tuna season. These measures are also intended to indirectly mitigate interactions with sea turtles by requiring all longline vessel operators to be educated on the status of sea turtles, as well as to follow handling, resuscitation, and release procedures. Finally, aspects of this rule that apply to non-longline pelagic fishing vessels will mitigate interactions with sea turtles by ensuring that they are handled, resuscitated, and released in a manner that promotes their long term survival.

This proposed rule would implement the following restrictions governing the owners and operators of all vessels registered for use under either a Hawaii longline limited access permit or a longline general permit (longline vessels): (a) Prohibit longline vessels from using longline gear to target swordfish north of the equator; (b) require longline gear to be deployed such that the deepest point of the main longline between any 2 floats, (i.e., the deepest point in each sag of the main line), is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface when fishing north of the equator; (c) require that a minimum of 15 branch lines are used between any 2 floats on vessels using monofilament gear when fishing north of the equator; (d) require that a minimum of 10 branch lines are deployed between any 2 floats on vessels using basket-style longline gear when fishing north of the equator; (e) require that longline vessel operators possess and employ float lines of at least 20 m (65.6 ft) to suspend the mainline beneath any float on fishing trips north of the equator; (f) prohibit possession of a lightstick on board a longline vessel on fishing trips north of the equator; (g) prohibit the landing or possessing of more than 10 swordfish per trip by longline vessels fishing north of the equator; (h) prohibit fishing by longline vessels from April 1 through May 31 in the area bounded on the south by the equator, on the west by 180° long., on the east by 145° W. long., and on the north by 15° N. lat.; (i) discourage the practice of de-registering a boat in the Hawaii longline fisheries in order to fish out of non-Hawaii-based ports and avoid turtle catch mitigation requirements, allow the processing of applications for the re-registration of a vessel that has been de-registered from a Hawaii longline limited access permit after March 29, 2001, only during the month of October and require that applications must be received or post-marked between September 15 and October 15 to allow sufficient time for processing; and (j) require operators of longline vessels to annually attend a protected species workshop conducted by NMFS. This proposed rule would use slightly different wording from the current emergency rule in place for the requirement (see § 660.33(b)) that float lines used to suspend the mainline beneath floats be longer than 20 m (65.6 ft) when longlining north of the equator. The revision clarifies that vessel operators may not maintain on board the vessel multiple shorter float lines and claim the lines will be fastened together to form a line exceeding 20 m when or if deployed. The revised wording clarifies that the restriction applies not just to float lines when actually deployed, but also to float lines that are merely possessed on board a permitted vessel. Also, the prohibition on the use of lightsticks would be clarified to mean any type of light emitting device, including any flourescent ''glow bead,'' chemical, or electrically powered light that is affixed underwater to the longline gear.

This proposed rule would also: (k) Require gear retrieval to cease if a sea turtle is discovered hooked or entangled on a longline during gear retrieval, until the turtle has been removed from the gear or brought onto the vessel's deck; (l) require operators of all ''large'' longline vessels (those with a working platform 3 ft (0.9 m) or more above the sea surface) to, if practicable, use a dip net meeting NMFS' specifications as prescribed in 50 CFR 660.32 to hoist a sea turtle onto the deck to facilitate the removal of the hook or to revive a comatose sea turtle. Operators of all ''small'' longline vessels (those with a working platform less than 3 ft (0.9 m) above the sea surface) would be required to, if practicable, ease a sea turtle onto the deck by grasping its carapace (shell) or flippers.

In addition, the operators of all longline vessels within the EEZ and the high seas around Hawaii, and non-longline pelagic fishing vessels fishing with hooks within EEZ waters of the western Pacific region, would be required to: (m) Carry and use line-clippers to cut fishing line from hooked or entangled sea turtles. Operators of ''large'' vessels (those with working platforms more than 3 ft (0.9 m) above the sea surface) would be required to use line clippers meeting NMFS' performance standard as prescribed in 50 CFR 660.32. Operators of ''small'' vessels (those with working platforms 3 ft (0.9 m) or less above the sea surface) could carry and use either a line cutter

that meets NMFS' performance standard, or one that is more appropriate to the size and configuration of the fishing vessel, but in either case this line clipper must be capable of cutting the vessel's fishing line or leader within approximately 1 ft of the eye of an embedded hook; (n) carry and use wire or bolt cutters capable of cutting through fishing hooks to facilitate cutting of hooks embedded in sea turtles; (o) remove all hooks from sea turtles as quickly and carefully as possible; however, if a hook cannot be removed, cut the line as close to the hook as possible; (p) handle all incidentally taken sea turtles brought aboard for dehooking and/or disentanglement in a manner to minimize injury and promote post-hooking survival. If a sea turtle is too large or hooked in such a manner to preclude safe boarding without causing further damage/injury to the turtle, use line-clippers to clip the line and remove as much line as possible prior to releasing the turtle; and (q) where practicable, bring comatose sea turtles on board the vessel and perform resuscitation as prescribed in 50 CFR 223.206 (d)(1), 660.22, and 660.32.

This proposed rule would define Basket-style longline gear as a type of longline gear that is divided into units called ''baskets'' each consisting of a segment of mainline to which 10 or more branch lines with hooks are spliced. The lines are made of multiple braided strands of cotton, nylon, or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

Classification

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

On March 30, 2001, NMFS issued an EIS that analyzes the environmental impacts of U.S. pelagic fisheries in the western Pacific region. The EIS was filed with the Environmental Protection Agency; a Notice of Availability was published on April 6, 2001 (66 FR 18243). See the preamble of this proposed rule for a discussion of the portions of the preferred alternative of the EIS that would be implemented by this rule. See the EIS for a discussion of the other alternatives considered by NMFS.

NMFS estimates that these measures would result in interactions between the Hawaii-based longline fishery and 11 green sea turtles (including 7 mortalities), 29 leatherback sea turtles (including 16 mortalities), and 0–5 interactions with loggerhead sea turtles (including 0–2 mortalities) each year. The EIS also estimated that these measures would result in annual interactions between all western Pacific regional pelagic handline, troll, and pole and line fisheries of 1 sea turtle per fishery (not specified by species) with no mortalities. The EIS found these measures are also expected to result in annual interactions between domestic longline fisheries based in American Samoa, Guam, and the Northern Mariana Islands of 3 hardshell turtles (not specified by species) and 1 leatherback turtle, per fishery (with 1 hardshell turtle mortality per fishery). Impacts of these measures on seabirds are anticipated to be positive due to the prohibition on shallow setting which is known to have a higher seabird interaction rate. Impacts on target and non-target fish stocks are anticipated to be minimal as these measures are not expected to significantly increase exploitation of these species. Broad social impacts of these measures are anticipated to be positive in that they are intended to mitigate sea turtle and seabird interactions. However, these measures may negatively impact individual fishery related workers, as well as consumers of fishery products.

A formal section 7 consultation under the ESA was concluded for the FMP. In a BiOp dated March 29, 2001, NMFS determined that fishing activities conducted under the FMP and its implementing regulations were likely to jeopardize the continued existence of the green sea turtle, leatherback turtle, and loggerhead turtle under the jurisdiction of NMFS and prescribed non-discretionary reasonable and prudent alternatives for this FMP to mitigate that determination. As described previously in this preamble, this proposed rule would implement those non-discretionary reasonable and prudent alternatives.

NMFS reinitiated consultation on the Pelagics FMP on December 12, 2001, based on new information which may improve NMFS' ability to quantify and evaluate the effects of the U.S. pelagic fisheries under the FMP and the reasonable and prudent alternative in the March 29, 2001, BiOp on listed sea turtle populations.

An IRFA that describes the impact this proposed rule, if adopted, would have on small entities was prepared and is available from the PIAO office for public review and comment(see **ADDRESSES**). A summary of the IRFA follows.

The need for and objectives of this proposed rule are stated in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this document and are not repeated here. This action does not contain reporting and record keeping requirements that would impact small entities. It will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR part 660.

Both large and small vessels affected by this proposed rule are considered to be ''small entities'' under guidelines issued by the Small Business Administration because they are independently owned and operated, and have annual receipts not in excess of $3.5 million. Only the Hawaii-based longline fleet is expected to experience significant direct effects from this proposed rule. This fishery averaged annual ex-vessel gross revenues of $40.7 million between 1994–1998 (the focus of the BiOp and the last full years prior to the implementation of a sequence of measures to protect sea turtles).

Assuming that fishing effort that is displaced as a result of the swordfish targeting prohibition or seasonal area closure is transferred into allowable effort in open areas, the anticipated annual loss of ex-vessel gross revenues from this fishery is estimated to be 11 percent ($4.3 million). At the other end of the extreme is a scenario in which all displaced effort is removed from the western Pacific longline fishery, resulting in an estimated annual decline of 42 percent ($17.2 million) in ex-vessel gross revenues.

Impacts on the American Samoa-based pelagic longline fisheries (the only active non-Hawaii longline fishery in the western Pacific region) are anticipated to be minimal, as these vessels generally fish below the equator and thus will not be affected by either the targeting restrictions or the seasonal area closure. The only direct cost for this fleet is that of acquiring bolt cutters and line clippers, for the smaller vessels, and bolt cutters, line clippers, and dip nets for the larger vessels. Assuming that these items are purchased from businesses in Hawaii and are useable for several years, the average cost per vessel is anticipated to be approximately $20 per vessel for bolt cutters, $30 per vessel for line clippers, and $75 per vessel for dip nets. The impact on fishing operations of using these items is anticipated to be minor because the likelihood of encountering a turtle is low, and in the event that a turtle is hooked or entangled, it is not a time-consuming procedure to free it.

Impacts on non-longline pelagic vessels throughout the region are also anticipated to be minimal, as the proposed rule will not affect the operations of these vessels beyond the

requirement that vessel operators purchase and use bolt cutters and line clippers to free hooked or entangled sea turtles. Because the use of long handled line clippers is optional on these small vessels, it is believed that the majority of these vessel operators will employ their bolt cutters to cut their fishing line if necessary. The impact on fishing operations of using these items is anticipated to be minor because the likelihood of encountering a turtle is low, and in the event that a turtle is hooked or entangled, it should not be a time-consuming procedure to free it.

A range of alternatives was also considered in the IRFA. The first alternative was the no action alternative, which was rejected because it would not provide any additional protection to sea turtles. A second alternative would have prohibited shallow setting by longline vessels in the western Pacific region, required longline fishing vessel operators to carry and use line clippers and dip nets and to employ specific handling techniques to mitigate interactions with sea turtles. This alternative was rejected because, although it would have mitigated longline interactions with sea turtles, it would not have provided sufficient mitigation to avoid jeopardizing their continued existence. A third alternative would have closed waters north of 29° N. lat. to longline fishing from July through January of each year, and required longline fishing vessel operators to carry and use line clippers and dip nets and to employ specific handling techniques to mitigate interactions with sea turtles. This alternative was also rejected because, although it would have mitigated longline interactions with sea turtles, it would not have provided sufficient mitigation to avoid jeopardizing their continued existence. A fourth alternative would have closed all western Pacific EEZ waters to longline fishing and prohibited the landing of longline caught fish in all domestic western Pacific ports. This alternative was also rejected because, although it would have provided increased protection to sea turtles as compared to the preferred alternative, it would also have eliminated western Pacific longline fisheries. NMFS believes that the preferred alternative balances the ongoing harvest of pelagic fish in the western Pacific region with necessary protection to endangered and threatened sea turtles.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, and Reporting and recordkeeping requirements.

Dated: April 19, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.21, paragraph (l) is revised to read as follows (Note: This proposed revision would supersede the addition of paragraph (l), at 66 FR 31564, June 12, 2001, originally effective June 12, 2001, through December 10, 2001, and later extended to June 8, 2002, at 66 FR 63630, December 10, 2001):

§ 660.21 Permits.

* * * * *

(l) Applications for the re-registration of any vessel that was de-registered from a Hawaii longline limited access permit after March 29, 2001, must be received at PIAO or postmarked, between September 15 and October 15.

3. In § 660.22, paragraphs (mm) through (uu) are removed, and paragraphs (z) through (ll) are revised to read as follows (Note: The proposed removal of paragraphs (mm) through (uu), and the revision of paragraphs (z) through (ll) would supersede the suspension of paragraphs (ee) through (ll), at 66 FR 31564, June 12, 2001, originally effective June 12, 2001, through December 10, 2001, and later extended to June 8, 2002, at 66 FR 63630, December 10, 2001):

§ 660.22 Prohibitions.

* * * * *

(z) Fail to carry line clippers, dip nets, and wire or bolt cutters on a vessel registered for use under a Hawaii longline limited access permit or a longline general permit, that has a working platform more than 3 ft (0.9 m) above the sea surface in violation of § 660.32 (a).

(aa) Fail to carry line clippers and wire or bolt cutters on a vessel fishing with hooks for Pacific pelagic management unit species within EEZ waters around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands that has a working platform more than 3 ft (0.9 m) above the sea surface in violation of § 660.32 (a)(2).

(bb) Fail to carry line clippers and wire or bolt cutters on a vessel registered for use under a Hawaii longline limited access permit or a longline general permit or on a vessel fishing with hooks for Pacific pelagic management unit species within EEZ waters around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands, that has a working platform less than 3 ft (0.9 m) above the sea surface, in violation of § 660.32 (a)(3).

(cc) Fail to comply with the sea turtle handling, resuscitation, and release requirements when operating a vessel registered for use under a Hawaii longline limited access permit or a longline general permit, or fishing with hooks for Pacific pelagic management unit species within EEZ waters around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands in violation of § 660.32(b).

(dd) Direct fishing effort toward the harvest of swordfish (*Xiphias gladius*) using longline gear deployed north of the equator on a vessel registered for use under a Hawaii longline limited access permit or a longline general permit in violation of § 660.33(a).

(ee) Fish for Pacific pelagic management unit species with a vessel registered for use under a Hawaii longline limited access permit or a longline general permit within closed areas or by use of unapproved gear configurations in violation of § 660.33 (b), (c), (g), or (h).

(ff) Use a receiving vessel registered for use under a receiving vessel permit to receive, land, or tranship from another vessel, Pacific pelagic management unit species harvested from closed areas with longline gear in violation of § 660.33 (d).

(gg) Land or tranship shoreward of the outer boundary of the EEZ around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands, Pacific pelagic management unit species that were harvested from closed areas with longline gear in violation of § 660.33 (e).

(hh) Possess a light stick on board a vessel registered for use under either a

Hawaii longline limited access permit or a longline general permit, on fishing trips that include any fishing north of the equator (0° lat.) in violation of § 660.33 (f).

(ii) Possess or land more than 10 swordfish on board a vessel registered for use under either a Hawaii longline limited access permit or a longline general permit, from a fishing trip where any part of the trip included fishing north of the equator (0° lat.) in violation of § 660.33 (i).

(jj) Operate a vessel registered for use under a Hawaii longline limited access permit or a longline general permit to fish for Pacific pelagic management unit species without having onboard a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.34 (c).

(kk) Fail to comply with seabird take mitigation or handling techniques required under § 660.35(a) and (b).

(ll) Use a large vessel to fish for Pacific pelagic management unit species within an American Samoa large vessel prohibited area except as allowed pursuant to an exemption issued under § 660.38.

4. In § 660.32 paragraphs (a)(1) and (a)(2) are redesignated as paragraphs (a)(4) and (a)(5) respectively, new paragraphs (a)(1), and (a)(2) are added, and paragraph (a)(3) is revised to read as follows (Note: This proposed revision would supersede the addition of paragraph (a)(3), at 66 FR 31564, June 12, 2001, originally effective June 12, 2001, through December 10, 2001, and later extended to June 8, 2002, at 66 FR 63630, December 10, 2001):

§ 660.32 Sea turtle take mitigation measures.

(a) *Possession and use of required mitigation gear*—(1) Owners and operators of vessels registered for use under a Hawaii longline limited access permit or a longline general permit that have working platforms more than 3 ft (0.9 m) above the sea surface must carry aboard their vessels line clippers meeting the minimum design standards as specified in paragraph (a)(4) of this section, dip nets meeting minimum standards prescribed in paragraph (a)(5) of this section, and wire or bolt cutters capable of cutting through the vessel's hooks. These items must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hook as possible in accordance with the requirements specified in paragraphs (b) through (d) of this section.

(2) Owners and operators of vessels using hooks to target Pacific pelagic management unit species within EEZ waters around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands, that have working platforms more than 3 ft (0.9 m) above the sea surface must carry aboard their vessels line clippers meeting the minimum design standards as specified in paragraph (a)(4) of this section, and wire or bolt cutters capable of cutting through the vessel's hooks. These items must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hook as possible in accordance with the requirements specified in paragraphs (b) through (d) of this section.

(3) Owners and operators of vessels registered for use under a Hawaii longline limited access permit or a longline general permit, or using hooks to target Pacific pelagic management unit species within EEZ waters around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands, that have working platforms 3 ft (0.9 m) or less above the sea surface must carry aboard their vessels line clippers capable of cutting the vessels fishing line or leader within approximately 1 ft (0.3 m) of the eye of an embedded hook as well as wire or bolt cutters capable of cutting through the vessel's hooks. These items must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hook as possible in accordance with the requirements specified in paragraphs (b) through (d) of this section.

* * * * *

5. Section 660.33 is revised to read as follows (Note: This proposed revision would supersede the suspension of § 660.33 at 66 FR 31564, June 12, 2001, originally effective from June 12, 2001, through December 10, 2001, and later extended to June 8, 2002, at 66 FR 63630, December 10, 2001):

§ 660.33 Western Pacific longline fishing restrictions.

(a) Owners and operators of vessels registered for use under a Hawaii longline limited access permit or a longline general permit may not use longline gear to fish for or target swordfish (*Xiphias gladius*) north of the equator (0° lat.).

(b) A person aboard a vessel registered for use under a Hawaii longline limited access permit or a western Pacific general longline permit that is fishing for Pacific pelagic management unit species north of the equator (0° lat.) may not possess or deploy any float line that is shorter than or equal to 20 m (65.6 ft or 10.9 fm). As used in this paragraph ''float line'' means a line used to suspend the main longline beneath a float.

(c) From April 1 through May 31, owners and operators of vessels registered for use under a Hawaii longline limited access permit or a longline general permit may not use longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long. (see Figure 1 to this section).

(d) From April 1 through May 31, owners and operators of vessels registered for use under a receiving vessel permit may not receive from another vessel Pacific pelagic management unit species that were harvested by longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long. (see Figure 1 to this section).

(e) From April 1 through May 31, owners and operators of vessels registered for use under a Hawaii longline limited access permit, a longline general permit, or a receiving vessel permit, may not land or transship shoreward of the outer boundary of the EEZ around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands, Pacific pelagic management unit species that were harvested by longline gear in waters bounded on the south by 0° latitude, on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long. (see Figure 1 to this section).

(f) No light stick may be possessed on board a vessel registered for use under either a Hawaii longline limited access permit or a longline general permit, during fishing trips that include any fishing north of the equator (0° lat.). A light stick as used in this paragraph is any type of light emitting device, including any flourescent ''glow bead,'' chemical, or electrically powered light that is affixed underwater to the longline gear.

(g) When a conventional monofilament longline is deployed in the water north of 0° lat. by a vessel registered for use under a Hawaii longline limited access permit or a longline general permit, no fewer than 15 branch lines may be set between any 2 floats when fishing north of the equator. Vessel operators using basket-

style longline gear must set a minimum of 10 branch lines between any 2 floats when fishing north of the equator.

(h) Longline gear deployed north of 0° lat. by a vessel registered for use under a Hawaii longline limited access permit or a longline general permit must be deployed such that the deepest point of the main longline between any 2 floats, i.e., the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface.(i) Owners and operators of longline vessels registered for use under a Hawaii longline limited access permit or a longline general permit may land or possess no more than 10 swordfish from a fishing trip where any part of the trip included fishing north of the equator (0° lat.).

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Figure 1 to § 660.33—Longline Fishing Restricted Area

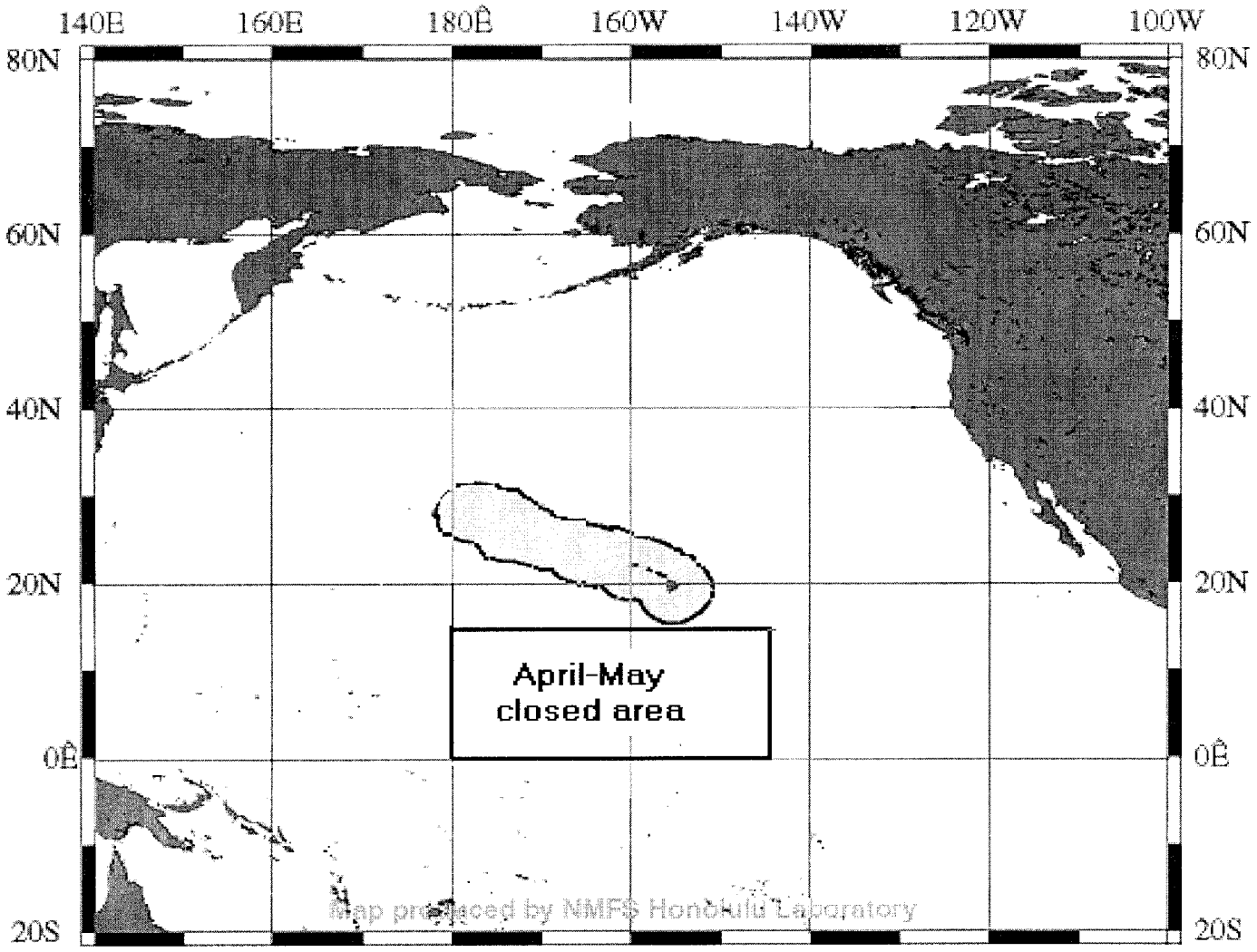

Figure 1 to § 660.33 - Longline Fishing Restricted Area

BILLING CODE 3510–22–C

6. Section 660.36 is redesignated as § 660.34 and revised to read as follows (Note: This redesignation and revision supersedes the addition to § 660.34 and Figure 3 to § 660.34, at 66 FR 31564, June 12, 2001, effective June 12, 2001, through Dec. 10, 2001, and the effective date was extended to June 8, 2002, at 66 FR 63630, Dec. 10, 2001):

§ 660.34 Protected species workshop.

(a) Each year the operator of a vessel registered for use under a Hawaii longline limited access permit or a longline general permit must attend and be certified for completion of a workshop conducted by NMFS on mitigation, handling, and release techniques for turtles and seabirds and other protected species.

(b) A protected species workshop certificate will be issued by NMFS annually to any person who has completed the workshop.

(c) An operator of a vessel registered for use under Hawaii longline limited access permit or a longline general permit and engaged in longline fishing, must have on board the vessel a valid protected species workshop certificate issued by NMFS or a legible copy thereof.

[FR Doc. 02–10081 Filed 4–26–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 82

Monday, April 29, 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

Commodity Credit Corporation

Revision and Extension of a Currently Approved Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is seeking to extend approval from the Office of Management and Budget (OMB) to extend its collection of information regarding intermodal transportation services needed to meet domestic and export food assistance program needs.

This information collection will allow CCC to determine the availability of intermodal marketing companies to meet the intermodal transportation needs of CCC for the movement of its freight traffic.

DATES: Comments on this notice must be received on or before June 28, 2002, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Greg Borchert, Chief, Planning and Analysis Division, Kansas City Commodity Office, 6501 Beacon Drive, Kansas City, Missouri 64133–4676, telephone (816) 926–6509, fax (816) 926–1648; e-mail *gmborchert@kcc.fsa.gov.*

SUPPLEMENTARY INFORMATION:

Title: Standard Operating Agreement Governing Intermodal Transportation.

OMB Control Number: 0560–0194.

Type of Request: Revision and Extension of a currently approved collection.

Abstract: CCC, through the Kansas City Commodity Office (KCCO), solicits bids from transportation companies for the purpose of providing intermodal transportation of agricultural commodities. Intermodal Marketing Companies (IMC) provide rail trailer-on-flatcar/container-on-flatcar (TOFC/COFC) service that CCC hires to provide program transportation needs. IMC's that choose to do business with the KCCO Export Operations Division (EOD) are required to complete and submit the Standard Operating Agreement Governing Intermodal Transportation form. This form is filled out one time only. EOD is collecting information to determine IMCs' that are available to meet CCC requirements for hauling agricultural products for CCC.

Estimate of Burden: Public reporting burden for collecting information under this notice is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Intermodal Marketing Companies.

Respondents: 14.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 14 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the 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 regarding this information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Washington, DC 20503, and to Greg Borchert, Chief, Planning and Analysis Division, Kansas City Commodity Office, 6501 Beacon Drive, Kansas City, Missouri 64133–4676, telephone (816) 926–6509, fax (816) 926–1648. All comments will become a matter of public record.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Signed at Washington, DC, on April 22, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–10389 Filed 4–26–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Revision and Extension of a Currently Approved Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: Commodity Credit Corporation (CCC) is seeking approval from the Office of Management and Budget (OMB) to obtain information regarding transportation services needed to meet domestic and export food assistance program needs.

This information collection will allow CCC to determine the availability of motor freight carriers to meet CCC's transportation needs.

DATES: Comments on this notice must be received on or before June 28, 2002, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Greg Borchert, Chief, Planning and Analysis Division, Kansas City Commodity Office (KCCO), 6501 Beacon Drive, Kansas City, Missouri 64133–4676, telephone (816) 926–6509, fax (816) 926–1648; e-mail *gmborchet@kcc.fsa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Standard Rules Tender Governing Motor Carrier Transportation.

OMB Control Number: 0560–0195.

Type of Request: Revision and Extension of a currently approved collection.

Abstract: CCC through the Kansas City Commodity Office (KCCO) solicits bids from transportation companies for the purpose of providing motor carrier transportation of agricultural commodities. Motor Carriers provide over the road trucking that CCC hires to provided transportation services to meet domestic and export program needs.

Motor carriers that choose to do business with the KCCO Export Operations Division (EOD) are required to complete and submit, one time only, the Standard Rules Tender Governing Motor Carrier Transportation. EOD is collecting information to determine the Motor Carriers that are available to meet CCC requirements for hauling agricultural products for CCC.

Estimate of Burden: Public reporting burden for collecting information under this notice is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Transportation Businesses.

Respondents: 99.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 99 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the 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 regarding this information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Washington, DC 20503, and to Greg Borchert, Chief, Planning and Analysis Division, Kansas City Commodity Office, 6501 Beacon Drive, Kansas City, Missouri 64133–4676, telephone (816) 926–6509, fax (816) 926–1648. All comments will become a matter of public record.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Signed at Washington, DC, on April 22, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–10390 Filed 4–26–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Provincial Advisory Committee (PAC) will meet on May 15 and 16, 2002, in Lake County, California. The purpose of the meeting is to discuss issues relating to implementing the Northwest Forest Plan.

DATES: A business meeting will be held from 10 a.m. to 5 p.m. on May 15, 2002, at the Robinson Rancheria Administrative Building, in Nice, CA. A field tour at the Upper Lake Ranger District of the Mendocino National Forest will be held on May 16, 2002, from 8:30 a.m. until 3 p.m.

ADDRESSES: The May 15 business meeting will be held at the Robinson Rancheria Administrative Building, 1545 East Highway 20, Nice, CA. The May 16 field tour will begin at the Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA.

FOR FURTHER INFORMATION CONTACT: Phebe Brown, Committee Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–3316; e-mail *pybrown@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Presentation on Salmon Recovery Plan; (2) Regional Ecosystem Office (REO) update; (3) update and discussion concerning Mendocino and Six Rivers National Forests Roads Analysis Processes; (4) presentation on County Resource Advisory Committees; (5) update on planning for a Province fire ecology/fuels treatment workshop; (6) Aquatic Conservation Subcommittee report; (7) report from fire managers working group; (8) Agency and PAC members current issues discussion; and (9) 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: April 10, 2002.

James Fenwood,

Forest Supervisor.

[FR Doc. 02–10397 Filed 4–26–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will hold its fourth meeting.

DATES: The meeting will be held on Monday 20, 2002, and will begin at 1:30 p.m. until approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forrest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Range District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Replacement Member Group A, (2) Proposals by Public, (3) Report of Subcommittee on Operating Guidelines/Action, (4) Report from Selection Criteria Subcommittee/Action, (5) Action on Proposed Projects, (6) Public Comment, (7) Next Agenda.

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: April 23, 2002.

James F. Giachino,

Designated Federal Officer.

[FR Doc. 02–10411 Filed 4–26–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Housing Demonstration Program

AGENCY: Rural Housing Service, (USDA).

ACTION: Notice of funding for the Rural Housing Demonstration Program.

SUMMARY: The Rural Housing Service (RHS) announces the availability of housing funds for Fiscal Year (FY) 2002

for the Rural Housing Demonstration Program. For FY 2002, RHS has set aside $1.5 million for the Innovative Demonstration Initiatives and is soliciting proposals for a Housing Demonstration program under section 506(b) of title V of the Housing Act of 1949. Under section 506(b), RHS may provide loans to low income borrowers to purchase innovative housing units and systems that do not meet existing published standards, rules, regulations, or policies. The intended effect is to increase the availability of affordable Rural Housing (RH) for low-income families through innovative designs and systems.

EFFECTIVE DATE: April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Gloria L. Denson, Senior Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, STOP 0783, 1400 Independence Ave. SW, Washington, DC 20250–0783, Telephone (202) 720–1474. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Under current standards, regulations, and policies, some low-income rural families lack sufficient income to qualify for loans to obtain adequate housing. Section 506(b) of title V of the Housing Act of 1949, 42 U.S.C. 1476, authorizes a housing demonstration program that could result in housing that these families can afford. Section 506 (b) imposes two conditions: (1) That the health and safety of the population of the areas in which the demonstrations are carried out will not be adversely affected, and (2) that the aggregate expenditures for the demonstration may not exceed $10 million in any fiscal year.

Rural Development State Directors are authorized in FY 2002 to accept demonstration concept proposals from individuals.

The objective of the demonstration programs is to test new approaches to constructing housing under the statutory authority granted to the Secretary of Agriculture. Rural Development will review each application for completeness and accuracy. Some demonstration proposals may not be consistent with some of the provisions of our 7 CFR part 3550-Direct Single Family Housing Loans and Grants regulation. Under section 506(b) of the Housing Act of 1949, the Agency may provide loans for innovative housing design units and systems which do not meet existing published standards, rules, regulations, or policies.

The Equal Credit Opportunity Act and Title VIII of the Civil Rights Act of 1968 provide that a program such as this be administered affirmatively so that individuals of similar low-income levels in the housing market area have housing choices available to them regardless of their race, color, religion, sex, national origin, familial status and handicap. Under Section 504 of the Rehabilitation Act of 1973 RD makes reasonable accommodations to permit persons with disabilities to apply for agency programs. Executive Order 12898 requires the Agency to conduct a Civil Rights Impact Analysis on each project prior to loan approval. Also, the requirements of Executive Order 11246 are applicable regarding equal employment opportunity when the proposed contract exceeds $10,000.

Completed applications that have been determined to carry out the objectives of the program will be considered on a first come, first served basis based on the date a completed application was submitted. An application is considered complete only if the ''Application for Approval of Housing Innovation'' is complete in content, contains information related to the criteria and all applicable additional information required by the application form has been provided. All application packages must be in accordance with the technical management requirements and address the criteria in the Proposal Content. The application, technical management requirements, Proposal Content and Criteria, and further information may be obtained from the Rural Development State office in each state. (See the State Office address list at the end of this notice or access the website at *http://www.rurdev.usda.gov/recd_map.html*.) A submitter of an incomplete application will be advised in writing of additional information needed for continued processing.

The following evaluation factors will not be weighted and are non-competitive. RHS, in its analysis of the proposals received, will consider whether the proposals will carry out the objectives of this demonstration effort in accordance with the following criteria:

A. Housing Unit Concept

1. A proposal must be well beyond the ''idea'' state. Sufficient testing must have been completed to demonstrate its feasibility. The proposal must be judged ready for full scale field testing in a rural setting.

2. Ability of the housing unit to provide for the protection of life, property, and for the safety and welfare of the consumer, general public and occupants through the design, construction, quality of materials, use, and maintenance of the housing unit.

3. Flexibility of the housing units in relation to varying types of housing and varying site considerations.

4. Flexibility of the housing unit concept, insofar as it provides the ability to adjust or modify unit size and arrangements, either during design or after construction.

5. Efficiency in the use of materials and labor, with respect to cost in place, conservation of materials, and the effective use of labor skills. Potential for use in the Mutual Self-Help Housing program will be considered.

6. Selection of materials for durability and ease of maintenance.

7. Concepts for the effective use of land and development.

B. Organization Capabilities

1. The experience and ''know-how'' of the proposed organization or individual to implement construction of the housing unit concept in relation to the requirements of RHS's housing programs.

2. The management structure and organization of the proposer.

3. The quality and diversity of management and professional talent proposed as ''key individuals.''

4. The management plan of how this effort will be conducted.

C. Cost and Price Analysis

1. The level of costs which are proposed, as they may compare with other proposals and be considered realistic for the efforts planned. Also, the quantity and level of detail in the information supplied.

2. Projected cost of ''housing in place,'' with particular reference to housing for very low and low-income families.

An acceptable proposal will be sent by the State Director to the National Office for concurrence by the RHS Administrator before the State Director may approve it. If the proposal is not selected, the State Director will so notify the applicant in writing, giving specific reasons why the proposal was not selected. The funds for the RH Demonstration program are section 502 single family housing funds and are available to housing applicants who wish to purchase an approved demonstration dwelling. Funds cannot be reserved or guaranteed under the demonstration housing concept. There is no guarantee that a market exists for demonstration dwellings, and this does not ensure that an eligible loan applicant will be available for such a section 502 RH dwelling. If there is no available RHS eligible loan applicant, the RH demonstration program applicant will have to advance funds to

complete the construction of the demonstration housing, with the risk that there may be no RHS applicant or other purchaser from which the builder will recover his or her development and construction costs.

This program or activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons contained in 7 CFR part 3015, subpart V and RD Instruction 1940–J, ''Intergovernmental Review of Rural Development Programs and Activities,'' this program or activity is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

All interested parties must make a written request for a proposal package. The request must be made to the State Director in the State in which the proposal will be submitted; RHS will not be liable for any expenses incurred by respondents in the development and submission of applications.

The reporting requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under Control Number 0575–0114.

Dated: April 19, 2002.

Arthur A. Garcia,

Administrator.

The following is an address list of Rural Development State Offices across the nation:

Alabama

Sterling Centre, 4121 Carmichael Road, Suite 601, Montgomery, AL 36106–3683, (334) 279–3400

Alaska

Suite 201, 800 W. Evergreen, Palmer, AK 99645–6539, (907) 761–7705

Arizona

Phoenix Corporate Center, 3003 N. Central Avenue, Suite 900, Phoenix, AZ 85012–2906, (602) 280–8700

Arkansas

Room 3416, 700 W. Capitol, Little Rock, AR 72201–3225, (501) 301–3200

California

Agency 4169, 430 G Street, Davis, CA 95616–4169, (530) 792–5800

Colorado

Room E100, 655 Parfet Street, Lakewood, CO 80215, (303) 236–2801

Delaware & Maryland

PO Box 400, 4607 S. DuPont Highway, Camden, DE 19934–9998, (302) 697–4300

Florida & Virgin Islands

PO Box 147010, 4440 NW 25th Place, Gainesville, FL 32614–7010, (352) 338–3400

Georgia

Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162

Hawaii

Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8309

Idaho

Suite A1, 9173 W. Barnes Drive, Boise, ID 83709, (208) 378–5600

Illinois

Illini Plaza, Suite 103, 1817 S. Neil Street, Champaign, IL 61820, (217) 398–5235, (217) 398–5412 for automated answer

Indiana

5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100

Iowa

873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663

Kansas

PO Box 4653, 1200 SW Executive Drive, Topeka, KS 66604, (785) 271–2700

Kentucky

Suite 200, 771 Corporate Drive, Lexington, KY 40503, (859) 224–7300

Louisiana

3727 Government Street, Alexandria, LA 71302, (318) 473–7920

Maine

PO Box 405, 967 Illinois Avenue, Suite 4, Bangor, ME 04402–0405, (207) 990–9110

Massachusetts, Conn, Rhode Island

451 West Street, Amherst, MA 01002, (413) 253–4300

Michigan

Suite 200, 3001 Coolidge Road, East Lansing, MI 48823, (517) 324–5100

Minnesota

410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800

Mississippi

Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4316

Missouri

Parkade Center, Suite 235, 601 Business Loop 70 West, Columbia, MO 65203, (573) 876–0976

Montana

Unit 1, Suite B, P. O. Box 850, 900 Technology Boulevard, Bozeman, MT 59715, (406) 585–2580

Nebraska

Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5551

Nevada

1390 S. Curry Street, Carson City, NV 89703–9910, (775) 887–1222

New Jersey

Tarnsfield Plaza, Suite 22, 790 Woodlane Road, Mt. Holly, NJ 08060, (609) 265–3600

New Mexico

Room 255, 6200 Jefferson Street, NE., Albuquerque, NM 87109, (505) 761–4950

New York

The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400

North Carolina

Suite 260, 4405 Bland Road, Raleigh, NC 27609, (919) 873–2000

North Dakota

Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502–1737, (701) 530–2044

Ohio

Federal Building, Room 507, 200 N. High Street, Columbus, OH 43215–2418, (614) 255–2400

Oklahoma

Suite 108, 100 USDA, Stillwater, OK 74074–2654, (405) 742–1000

Oregon

Suite 1410, 101 SW Main, Portland, OR 97204–3222, (503) 414–3300

Pennsylvania

Suite 330, One Credit Union Place, Harrisburg, PA 17110–2996, (717) 237–2299

Puerto Rico

IBM Building-Suite 601, 654 Munos Rivera Avenue, Hato Rey, PR 00918–6106, (787) 766–5095

South Carolina

Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163

South Dakota

Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100

Tennessee

Suite 300, 3322 W. End Avenue, Nashville, TN 37203–1084, (615) 783–1300

Texas

Federal Building, Suite 102, 101 S. Main, Temple, TX 76501, (254) 742–9700

Utah

Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Post Office Box 11350, Salt Lake City, UT 84147–0350, (801) 524–4320

Vermont & New Hampshire

City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000

Virginia

Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1550

Washington

Suite B, 1835 Black Lake Blvd., SW., Olympia, WA 98512–5715, (360) 704–7740

West Virginia

Federal Building, Room 320, 75 High Street, Morgantown, WV 26505–7500, (304) 284–4860

Wisconsin

4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600

Wyoming

Federal Building, Room 1005, 100 East B, PO Box 820, Casper, WY 82602, (307) 261–6300

[FR Doc. 02–10505 Filed 4–26–02; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815, A–580–816]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Cold-Rolled and Corrosion Resistant Carbon Steel Products from Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review of Cold-Rolled and Corrosion Resistant Carbon Steel Products from the Republic of Korea.

DATES: April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Mesbah Motamed, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–1382.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Scope Of The Reviews

The review of ''certain cold-rolled carbon steel flat products'' covers cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness, or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (''HTS'') under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

The review of ''certain corrosion-resistant carbon steel flat products'' covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

These HTS item numbers are provided for convenience and U.S. Customs purposes. The written descriptions remain dispositive.

Amendment Of Final Results

On March 11, 2002, the Department of Commerce (''the Department'') issued its final results for certain cold-rolled and corrosion resistant carbon steel flat products from Korea. The period of review for cold-rolled products is

August 1, 1999 through December 31, 1999, and the period of review for corrosion resistant products is August 1, 1999 through July 31, 2000. *See Notice of Final Results of Antidumping Duty Administrative Reviews; Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea*, 67 FR 11976, (March 18, 2002), (''Final Results'').

On March 18, 2002, respondent Union Steel Manufacturing Co., Ltd. (''Union'') timely filed an allegation that the Department made a ministerial error in the final results. Petitioners did not submit any comments in reply to this ministerial error allegation.

On March 19, 2002, petitioners timely filed an allegation that the Department made a ministerial error in the final results of Pohang Iron and Steel Co., Ltd et al (''POSCO''). POSCO timely submitted its rebuttal comments on March 25, 2002.

Section 735(e) of the Act defines a ''ministerial error'' to include ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copy, duplication, or the like, and any other type of unintentional error which the administrative authority considers ministerial.'' See also section 351.224(f) of the Department's regulations. The Department is revising its dumping margin calculation as a result of a ministerial error in the calculation of Union's and POSCO's indirect selling expense ratio. The resulting margins are listed below.

Allegation of a Ministerial Error Regarding Union

Union contends that the Department, in its *Final Results,* erroneously calculated its indirect selling expense (''ISE'') ratio for its sales of cold-rolled and corrosion resistant products. Specifically, in calculating the corrosion resistant ISE ratio, Union argues that the Department applied a value for Union's total sales that was not POR-specific. Additionally, according to Union, the Department applied non-Union-specific values for Union's interest expenses and income for both cold-rolled and corrosion-resistant products.

Department's Position

We agree with Union. Our *Final Results* inadvertently overstated Union's indirect selling expense ratio by using certain values that were not specific to either the POR or Union, thus generating an inaccurate dumping margin. We have updated this calculation. These changes do not alter the dumping margin on cold-rolled steel products from Union. For more details surrounding these corrections, see *Analysis for the Amended Final Results in the Administrative Review of the Antidumping Duty Order on Cold-Rolled and Corrosion Resistant Carbon Steel Products from Korea- Union Steel Manufacturing Co., Ltd.* (''Union's Analysis Memo'').

Allegation of a Ministerial Error Regarding POSCO

Petitioners argue that the Department used amounts for POSCO's interest expenses and income that were not POR-specific. The use of these incorrect amounts, according to petitioners, generated an understatement of POSCO's ISE ratio. According to petitioners, the Department should use the POR-specific values submitted by POSCO in its calculation of the ISE ratio.

POSCO objects to petitioners' arguments and claims the Department's calculations reflect methodological decisions, not ministerial errors, as they are not errors in ''addition, subtraction, or other arithmetic function, clerical error resulting from the inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' POSCO contends that the calculations, as detailed and referenced in the analysis memo, reflect the deliberate intention of the Department to calculate POSCO's ISE ratio in a particular manner.

Department's Position

We agree with petitioners that the Department's calculation contained two ministerial errors in the use of the calendar year 2000 interest expenses and calendar year 2000 interest income. The Department intended to calculate POR-specific values for the ISE ratio but inadvertently used the wrong values. The Department has corrected the program accordingly. For more details surrounding this corrections, see *Analysis for the Amended Final Results of the Seventh Administrative Reviews of Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea- Pohang Iron and Steel Co., Ltd., Pohang Coated Steel Co., Ltd., and Pohang Steel Industries Co., Ltd.*, (''POSCO's Analysis Memo'').

Conclusion

We are amending the final results of the antidumping duty administrative review of cold-rolled and corrosion resistant carbon steel products from Korea to reflect the correction of the above-cited ministerial errors. The amended final results are as follows:

Certain Corrosion-Resistant Carbon Steel Flat Products	
Producer/ Manufacturer/Exporter	Weighted-Average Margin
The POSCO Group	0.86
Union	0.27

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

April 18, 2002

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–10482 Filed 4–26–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042202F]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

DATES: The meetings will be held on May 13–16, 2002.

ADDRESSES: These meetings will be held at the Hilton Sandestin Beach & Golf Resort, 4000 Sandestin Boulevard South, Destin, FL 32550; telephone: 850–267–9500.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

May 15

8:30 a.m.—Convene.

8:45 a.m.–11:30 a.m.—Receive public testimony on Draft Shrimp Amendment 10/Environmental Assessment/Regulatory Impact Review (EA/RIR), the Secretarial Greater Amberjack Rebuilding Amendment, and the Secretarial Red Grouper Amendment. Although the Council will hear public testimony on the Secretarial Red Grouper Amendment, final action will not be taken until the July 8–12, 2002 Council meeting in Sarasota, FL.

1 p.m.–5 p.m.—Continue public testimony if necessary.

May 16

8:30 a.m.– 9 a.m.—Receive a report of the Shrimp Management Committee.

9 a.m.–11:30 a.m.—Receive the report of the Reef Fish Management Committee.

1 p.m.–1:15 p.m.—Receive a report of the Spiny Lobster Management Committee.

1:15 p.m.–2 p.m.—Receive a report of the Habitat Protection Committee.

2 p.m.–2:15 p.m.—Receive a report of the Data Collection Committee.

2:15 p.m.–2:30 p.m.—Receive a report of the Personnel Committee.

2:30 p.m.–2:45 p.m.—Receive a report of the NMFS Billfish Advisory Panel (AP) meeting.

2:45 p.m.–3 p.m.—Receive a report of the NMFS Highly Migratory Species AP meeting.

3 p.m. –3:15 p.m.—Receive a report of the Gulf Safety Committee meeting.

3:15 p.m.–3:30 p.m.—Receive the Council Coral Grants report.

3:45 p.m.—Receive Enforcement Reports.

3:45 p.m.– 4 p.m.—Receive the NMFS Regional Administrator's Report.

4 p.m.–4:30 p.m.—Receive Director's Reports.

4:30 p.m.– 4:45 p.m.—Other Business.

Committees

May 13

9 a.m.–11:30 a.m.—Convene the Shrimp Management Committee to hear a staff presentation on a revised Draft Shrimp Amendment 10/EA/RIR and develop recommendations for final action by the full Council on Thursday morning. They will also have a presentation on the effects of shrimp trawling on the environment.

1 p.m.–2:30 p.m.—Convene the Data Collection Committee to hear presentations on the Gulf States Marine Fisheries Commission (GSMFC) Recreational Fisheries Information Network (RecFIN) and Commercial Fisheries Information Network (Com/FIN) Programs and the Marine Recreational Fishery Statistics Survey (MRFSS) Artificial Reef Data Program.

2:30 p.m.–5:30 p.m.—Convene the Habitat Protection Committee to review an Options Paper for an Essential Fish Habitat (EFH) Programmatic Environmental Impact Statement (PEIS) document.

May 14

8:30 a.m.–9 a.m.—Convene the Spiny Lobster Management Committee to review a proposal to increase possession of undersized lobster.

9 a.m.–11:30 a.m.—Convene the Reef Fish Management Committee to hear a status report on jewfish (goliath grouper) and an evaluation of gag marine reserves. They will also make recommendations for the completion of Secretarial Amendment 2 for Rebuilding Amberjack, a Reef Fish Amendment 21 Scoping Document for Extension of Marine Reserves Rule, and a Regulatory Amendment for Gag and Greater Amberjack Status Determination Criteria. They will hear a progress report of the Ad Hoc Red Snapper AP on development of individual fishing quotas (IFQ) profile, and review Draft Secretarial Amendment 1 for Red Grouper/Supplementary Environmental Impact Statement (SEIS). The full Council will consider these recommendations on Thursday.

1 p.m.–5 p.m.—Continue the Reef Fish Management Committee.

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act), those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

A copy of the Committee schedule and agenda can be obtained by calling (813) 228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by May 6, 2002.

Dated: April 24, 2002.

Theophilus R. Brainerd,

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

[FR Doc. 02–10486 Filed 4–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041702D]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel and Oversight Committee in May, 2002, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between May 13–15, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Sheraton Inn Providence Airport, 1850 Post Road, Warwick RI 02886; telephone: (401) 738–4000.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: *Monday, May 13, 2002, at 10 a.m.*–Scallop Advisory Panel Meeting.

The Advisory Panel will develop recommendations on Draft Amendment 10 for consideration by the Scallop Oversight Committee. The recommendations may include preferred alternatives and/or amendments to the draft alternatives.

Tuesday, May 14, 2002, at 9 a.m. and Wednesday, May 15, 2002, at 9 a.m.–Scallop Oversight Committee Meeting.

The Oversight Committee will review analyses of potential impacts associated with Draft Amendment 10 alternatives, consider recommendations from the Advisory Committee and choose preferred alternatives for recommendation to the Council. The committee may recommend additional analyses or amendments to the alternatives before the Council approves the documents for public hearing.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: April 24, 2002.

Theophilus R. Brainerd,

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

[FR Doc. 02–10485 Filed 4–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042402A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of cancellation of public meeting.

SUMMARY: The Monday, April 29, 2002, meeting of an ad hoc committee of the Pacific Fishery Management Council (Council) has been cancelled.

DATES: The meeting was scheduled to convene at 8 a.m. on Monday, April 29, 2002, and adjourn the same day when business is completed.

ADDRESSES: The meeting was to occur in Suite C of the California Department of Fish and Game Offices at 4665 Lampson Avenue, Los Alamitos, California 90720, 562–342–7114.

Council address: 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Fishery Economics Staff Officer, telephone: 503–326–6352.

SUPPLEMENTARY INFORMATION: The initial notice was published on April 15, 2002 (see 67 FR 18175, April 15, 2002). The meeting may or may not be rescheduled for a later date. The purpose of the meeting was to review California Fish and Game Commission proposals for the creation of marine reserves for the Channel Islands National Marine Sanctuary.

Dated: April 24, 2002.

Theophilus R. Brainerd,

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

[FR Doc. 02–10490 Filed 4–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040902C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting which is open to the public.

DATES: The GMT working meeting will begin Monday, May 13, 2002, at 1 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. to 5 p.m. Tuesday, May 14 through Friday, May 17.

ADDRESSES: The meetings will be held at the NMFS Southwest Fisheries Science Center, Santa Cruz Laboratory, 110 Shaffer Road, Santa Cruz, CA 95060; telephone: (831) 420–3900.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Staff Officer; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the GMT working meeting is to plan strategies to effectively aid the Council in managing 2002 West Coast groundfish fisheries and Council initiatives expected to arise in 2002. Additionally, the GMT will discuss groundfish management measures in place for the spring and summer months, discuss recommended management measures for 2003 fisheries, respond to assignments relating to implementation of the Council=s groundfish strategic plan, review and consider technical aspects of draft stock rebuilding plans and analyses, review new groundfish stock assessments and survey results, and address other assignments relating to groundfish management.

Although non-emergency issues not contained in this agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action

under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: April 23, 2002.

Richard W. Surdi,

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

[FR Doc. 02–10491 Filed 4–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042202G]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The 80th meeting of the Western Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will convene May 14 through May 16, 2002, in Lihue, HI.

DATES: The SSC meeting will be held from 9 a.m. to 5 p.m. on May 14, 2002, and from 8:30 a.m. to 5 p.m. on May 15–16, 2002.

ADDRESSES: The 80th SSC meeting will be held at the Kauai Marriott Resort and Beach Club, 3610 Rice Street, Kalapaki Beach, Lihue, HI; telephone: (808–245–5050).

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, ExecutiveDirector; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The SSC will discuss and may make recommendations to the Council on the agenda items below. The order in which agenda items will be addressed can change.

Tuesday, May 14, 2002, 9 a.m.

1. Introductions

2. Approval of Draft Agenda and Assignment of Rapporteurs

3. Approval of the Minutes of the 79th Meeting

4. Comprehensive Sustainable Fisheries Act Amendment

Maximum Sustainable Yield/ overfishing control rules

5. Crustaceans Fisheries (Northwestern Hawaiian Islands (NWHI) lobsters)

A. Report on the Modeling Workshop
B. Plan Team report
C. Discussion and recommendations

6. Bottomfish Fisheries

A. Research on Hapuupuu
B. Annual Report Modules
C. NWHI Framework Adjustment
D. Plan Team Recommendations
E. Public comment
F. Discussion and recommendations

7. Hawaiian Monk Seals

A. Quarterly Report on Activities of the Marine Mammal Research Program (MMRP)
B. Monk Seal Recovery Team update
C. Marine Mammal Commission review of MMRP
D. Simulation model
E. Discussion and recommendations

Wednesday, May 15, 2002, 8:30 a.m.

1. Pelagic Fisheries

A. 1st quarter 2002 Hawaii and American Samoa longline reports
B. Hawaii recreational fishery data base
C. Economic Study of the Hawaii and American Samoa longline fisheries
D. American Samoa limited entry program
E. Emergency action - Hawaii longline fishery (new area closure and swordfish trip limit)
F. Sea turtle conservation and management
i. Section 10 permitted Honolulu Lab mitigation research
ii. New Biological Opinion
iii. Pacific sea turtle recovery plan/ implementation teams
iv. Report from the International Leatherback Survival Conference
v. Turtle Excluder Device (TEDs) certification program
G. Hawaii recreational fishery log book pilot project
H. Pelagics Fishery Management Plan (FMP) Amendment 9, Shark management, redraft
I. Pelagic Fisheries Research Program
i. New Projects
ii. 15th Standing Committee on Tunas and Billfish (agendas, working groups)
J. International Meetings
i. South Pacific Tuna Treaty
ii. 2nd International Fishers Forum
K. Public comment
L. Discussion and recommendations

Thursday, May 16, 2002, 8:30 a.m.

1. Precious Corals Fisheries

A. Status
B. Plan Team Report
C. Discussion and recommendations

2. Ecosystem and Habitat

A. Meso-pelagic ecosystem studies
B. Coral reef assessment surveys of the NWHI and American Samoa
C. Refining Essential Fish Habitat designations
D. Status Reef fish stock assessment workshop
E. Ecosystem Planning workshop
F. Marine Protected Areas Policy Working Group report
G. Invasive Species
H. Public Comment
I. Discussion and recommendations

3. Status of Initiatives

A. Council/NMFS long term research planning for Western Pacific Region
B. NMFS Pacific Islands Region structure
C. Discussion and recommendations

4. Other Business

5. Summary of Recommendations to Council

6. Meeting Schedule for 2002

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: April 24, 2002.

Theophilus R. Brainerd,

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

[FR Doc. 02–10484 Filed 4–26–02; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION ON THE FUTURE OF THE UNITED STATES AEROSPACE INDUSTRY

Public Meeting

AGENCY: Commission on the Future of the United States Aerospace Industry.

ACTION: Notice.

SUMMARY: This meeting is the third in a series of planned public meetings being held by the Commission to carry out its statutory charge with respect to the U.S. civil and military, air and space enterprise. The focus of this meeting is on receiving testimony and conducting deliberations on space; industrial base; and workforce issues, including labor and education. The meeting will close with deliberations and decisions concerning a potential interim report and topics for the next meeting.

Section 1092 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398) established the Commission on the Future of the United States Aerospace Industry to study the issues associated with the future of the United States national security; and assess the future importance of the domestic aerospace industry for the economic and national security of the United States. The Commission is governed by the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation of advisory committees and implementing regulations (41 CFR subpart 101–6.10). All interested parties are welcome to submit written comments at any time.

TIME AND DATE: Tuesday, May 14, 2002; 8:30 a.m. to 5:30 p.m.

ADDRESSES: Herbert C. Hoover Building Auditorium, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Cindy Waters, 1235 Jefferson Davis Highway, Suite 940; Arlington, Virginia, 22202; phone 703–602–1515; e-mail *watersc@osd.pentagon.mil.* Reasonable accommodation will be provided for any individual with a disability. Pursuant to the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, any individual with a disability who requires reasonable accommodation to attend the public meeting of the Aerospace Commission may request assistance by contacting Ms. Cindy Waters at least five (5) working days in advance.

Dated: April 18, 2002.

Charles H. Huettner,

Executive Director, Commission on the Future of the United States Aerospace Industry.

[FR Doc. 02–10468 Filed 4–26–02; 8:45 am]

BILLING CODE 6820–WP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session at the Pentagon on May 2, 2002, from 0900 to 1730.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B(c)(1)(1982), and that accordingly this meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Ann Hansen, 703–693–7034.

Dated: April 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–10383 Filed 4–26–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Disposal and Reuse of the Marine Corps Air Station El Toro, Orange County and Irvine, CA

AGENCY: Department of the Navy, DoD.

ACTION: Notice of record of decision.

SUMMARY: Under the authority of the Defense Base Closure and Realignment Act of 1990, (DBCRA), the Department of the Navy (DON) announces its decision to dispose of the former Marine Corps Air Station (MCAS) El Toro in a manner consistent with state and local land use plans, and in accordance with lawful disposal authorities, including public sale. In deciding to dispose of MCAS El Toro, the DON has determined that mixed land use is consistent with the Orange County General Plan, as recently amended by the passage of the Orange County Central Park and Nature Preserve Initiative (Measure W) on March 5, 2002, and the City of Irvine General Plan. Mixed land use also will meet the goals of local economic redevelopment and job creation set out in the DBCRA. This Record of Decision (ROD) leaves selection of the particular means to achieve redevelopment to the acquiring entity and the local zoning authorities.

SUPPLEMENTARY INFORMATION: MCAS El Toro was closed in July 1999 pursuant to the DBCRA. The MCAS El Toro property is located within central Orange County. The property is being managed by the DON as an inactive facility pending a decision regarding disposal and reuse. Approximately 424 acres of the MCAS El Toro property are located within the corporate boundaries of the city of Irvine. The remaining 4,314 acres are located within the unincorporated areas of Orange County. The existing airfield contains five runways and their associated parallel and connecting taxiway systems. The existing development on MCAS El Toro is generally clustered around the airfield; there are approximately 500 non-residential buildings, 1,188 family housing units, and 4,380 bachelor-housing units.

The DON goal is to help base closure communities achieve economic recovery through reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions, redevelopment plans prepared by the designated Local Reuse Authority (LRA), and local land use plans. Thus, the DON has adopted a consultative approach with each closure community. As a part of this approach, the base closure community's interests, as reflected in its land use plans and zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal.

Excluded from this decision are 975-acres of excess property located in the northeast portion of MCAS El Toro. The DON transferred a 905-acre parcel to the Federal Aviation Administration (FAA) in December 2001 for use as an Airport Surveillance Radar facility and wildlife

habitat reserve. The DON intends to transfer a 70-acre parcel to the Department of Justice. These transfers of excess property to other federal agencies are independent of the disposal of surplus property addressed in this ROD.

Orange County, as the designated LRA, prepared and adopted a DBCRA redevelopment plan for the MCAS El Toro property. The approved DBCRA redevelopment plan directed development of the property as a commercial airport. The DON prepared an EIS analyzing the impacts of disposal and reuse of the MCAS El Toro property. The FAA, as the agency responsible for public airport development and operation, participated as a joint lead agency in preparation of the Final EIS. The DBCRA requires that the DON treat the LRA's redevelopment plan as part of the proposed federal action for the installation and that the redevelopment plan be given preference. Therefore, from among the several reuse scenarios analyzed during the EIS process, the DON and the FAA identified a commercial airport alternative as the preferred alternative.

On March 5, 2002 the voters of Orange County adopted Measure W, an amendment to the Orange County General Plan. Measure W voided an earlier amendment to the Orange County General Plan that designated the property for aviation use and replaced it with a mixed-use, non-aviation designation that allowed education, park, recreation, cultural, and other public oriented uses.

Passage of Measure W, which limits the use of MCAS El Toro to non-aviation re-use, prohibits the FAA and the DON from being able to consider the preferred alternative identified in the Final EIS. FAA therefore at this time has no further role in the decision making process for the disposal of MCAS El Toro. That function solely rests now with the Department of the Navy.

Alternatives

The DON analyzed the impacts of five disposal/reuse alternatives and a no action alternative. The disposal/reuse alternatives represented a range of reasonably foreseeable uses including commercial aviation and non-aviation uses. Non-aviation uses were considered reasonably foreseeable reuses, notwithstanding the LRA's adoption of a commercial aviation redevelopment plan, because reuse of the MCAS El Toro property was a controversial topic in Orange County.

Aviation alternatives were based upon those developed by Orange County in its public reuse planning process. The three aviation alternatives analyzed in the EIS varied in the type (*i.e.* passenger or cargo) and level of aircraft operations. Each aviation alternative includes some mix of non-aviation uses such as commercial, light industrial, educational and open space. The Reduced Commercial Airport Alternative was identified in the FEIS as the preferred alternative because it was based upon a publicly adopted amendment to the Orange County General Plan requiring that the MCAS El Toro property be used for a commercial airport and related uses.

Non-aviation alternatives were based upon a mixed land use approach. The Business Park Alternative and the Village Park Alternative projected different conceptual combinations of residential, commercial, light industrial, educational, recreational, and public/community service uses.

The ''no action'' alternative would leave the property under DON control. Existing agricultural and educational leases would continue until they expired. All other leases would be terminated. The area would be fenced and buildings would be vacated and sealed. Only essential maintenance and security functions would be provided. Environmental cleanup would be completed. Because the no action alternative has less potential for adverse environmental impacts, it is the environmentally preferable alternative. However, the no action alternative would not promote local economic development nor create jobs and, therefore, is inconsistent with the statutory direction contained in the DBCRA.

Significant Environmental Impacts

For each alternative the DON analyzed the direct, indirect, and cumulative impacts of the disposal and reuse of the surplus MCAS El Toro property in the following environmental impact categories: Land use, Socio-economics; Recreation; Aesthetics; Public Services and Utilities; Historic and Archaeological Resources; Biological Resources; Topography, Soils and Geology; Hydrology and Water Quality; Hazardous Wastes and Materials; Public Health and Safety; Traffic and Transportation; Air Quality; and Noise.

This ROD presents a summary of potentially significant adverse impacts associated with the Business Park and Village Park alternatives. Both of these alternatives represent mixed land use redevelopment that is consistent with the phased, mixed land use redevelopment concept approved by Orange County voters when they amended the Orange County General Plan through Measure W. Detailed discussions for each environmental impact category are contained in Chapter 4 of the FEIS. Cumulative impacts are addressed in Chapter 6.

Redevelopment could adversely affect farmland. Under California's Environmental Quality Act, the loss of 660 acres of Prime Farmland is considered significant. However, federal standards for evaluating the loss of farmlands are derived from the Farmland Protection Policy Act (FPPA). The farmland on MCAS El Toro does not have a high enough value to warrant protection under the FPPA, so impacts are not considered significant.

Redevelopment could adversely affect about 1.5 acres of surface water that is considered ''waters of the United States'' for purposes of the Clean Water Act (CWA). These 1.5 acres would be filled or the water channeled through concrete structures. Significant adverse impacts can be avoided through project design and mitigation measures imposed by the Army Corps of Engineers during the CWA Section 404 permitting process.

Redevelopment could have significant impacts on traffic. Mixed non-aviation uses are projected to generate approximately 300,000 to 340,000 trips per day at build-out. This level of traffic would cause substantial delays at up to 35 intersections and four freeway segments. Significant impacts could be mitigated through development of a transportation demand management program, intersection improvements, and construction of additional freeway lanes on Interstates 5 and 405 in various locations.

Redevelopment could have significant traffic-related noise impacts. An increase in traffic noise levels of as much as 3–4 dB(A) could occur. Because the location of traffic-related noise impacts will vary depending upon the manner in which mixed non-aviation uses are implemented, mitigation measures would have to be identified through site-specific noise studies prepared on detailed development proposals when those proposals are submitted to County or City officials for approval.

Mitigation

Once property is conveyed outside of federal control, land use is solely a function of state and local planning and zoning authorities. The DON cannot impose post conveyance restrictions on land use absent specific statutory authority to do so such as that provided for the imposition of land use controls under CERCLA. As a result, the DON

has no authority to require that parties acquiring the former MCAS El Toro property impose the mitigation measures identified in the FEIS or this ROD.

Comments Received on the Final EIS

Several organizations submitted comments on the FEIS. Most of those comments reiterated issues addressed in the response to comments included in the FEIS. A few comments identified substantive environmental issues not raised earlier in the NEPA process. Those comments are addressed below.

One comment alleged that the analysis was inadequate because it did not contain a conformity determination for non-aviation mixed land use. The DON disagrees with that allegation. No conformity analysis for mixed land use redevelopment is required. Conveyance of federal property outside federal control is expressly exempted from the conformity provisions of the Clean Air Act and there is no DON involvement in post conveyance redevelopment that would require conformity analysis.

Several comments alleged that the analysis was inadequate because it failed to address hazardous waste remediation in terms of the mixed land use directed by Measure W. The DON disagrees with those allegations. The analysis in the EIS addressed impacts associated with phased, mixed land use redevelopment such as that directed by measure W. CERCLA remedial actions are addressed through an independent process that examines alternative remedies based upon reasonably foreseeable land uses. State and local governments exercising planning and zoning authority have a prominent role in the development of CERCLA remedies. DON will impose land use controls where necessary to ensure protection of human health and the environment.

Conclusions

In deciding to dispose of the MCAS El Toro property in a manner consistent with state and local land use plans and policies, the statutory goals and objectives of the DBCRA in relation to the redevelopment of MCAS El Toro, as discussed in the FEIS, were carefully considered. The DON reviewed the purpose and need that this proposed disposal and reuse action would serve; the alternative means of achieving the purpose and need; the environmental impacts of these alternatives; the mitigation potentially necessary to preserve and enhance the human, cultural, and natural environment; the general costs and benefits; and the recent amendments to the Orange County General Plan.

The DON also determined that the mixed non-aviation land uses analyzed in the FEIS are similar to those set forth in Measure W. The Business Park and Village Park alternatives are conceptual redevelopment plans. They addressed general categories of use but, because they involved redevelopment over a 20-year period, did not contain specific plans or projects. Projecting which specific plans or projects could be implemented over the period of such mixed-use redevelopment is speculative at best, so analysis of the mixed land use alternatives could be done only at the conceptual level. Measure W is also a conceptual mixed land use plan. It expressly recognized that redevelopment must be accomplished over an extended period of time; that specific uses could change during a phased implementation; and that phased implementation requires flexibility. Consequently, the DON found that the conceptual approach to analysis of phased mixed land use alternatives used in the FEIS adequately addresses the phased mixed land use now required under the Orange County General Plan as a result of the passage of Measure W.

Finally, the DON considered the effect that Measure W has on the aviation reuse plan adopted by Orange County and determined that it was not necessary, under the provisions of the DBCRA and the DoD Base Reuse Implementation Manual, to delay a decision. The FEIS examined a range of disposal/reuse alternatives based upon reasonable assumptions and foreseeable reuses as required by NEPA and the BRIM.

Therefore, on behalf of the DON, we have decided to dispose of the former Marine Corps Air Station (MCAS) El Toro in a manner consistent with state and local land use plans, using the lawful authorities available to the DON for property disposal.

Dated: April 23, 2002.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 02–10380 Filed 4–26–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1551–000]

Ameren Energy, Inc. on Behalf of Union Electric Companyd/b/a AmerenUE and Ameren Energy Generating Company; Notice of Filing

April 19, 2002.

Take notice that on April 16, 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 U.S.C. 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 *Conoco, Inc.* Ameren Energy seeks Commission acceptance of these service agreements effective April 5, 2002.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Any person desiring to intervene or to protest this filing should file 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). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: May 7, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–10436 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–121–000]

Bayou Cove Peaking Power, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

April 19, 2002.

Take notice that on April 17, 2002, Bayou Cove Peaking Power, LLC (Bayou Cove) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935 (PUHCA) and Part 365 of the Commission's regulations.

As more fully explained in the application, Bayou Cove states it is a limited liability company that will be engaged either directly or indirectly and exclusively in the business of owning and operating an electric generation facility located in Louisiana.

Any person desiring to intervene or to protest this filing should file 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). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: May 10, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–10435 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–29–000]

Bayou Cove Peaking Power, LLC, Big Cajun I Peaking Power, LLC, and NRG Rockford II, LLC; Notice of Application

April 19, 2002.

Take notice that on April 17, 2002, Bayou Cove Peaking Power, LLC, Big Cajun I Peaking Power LLC, and NRG Rockford II LLC submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to incur long-term indebtedness under an intercompany loan and to guarantee the bonds, in an aggregate amount of up to $330 million.

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 and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the 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.

Comment Date: May 8, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–10438 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–45–002]

Colorado Interstate Gas Company; Notice of Amendment to Certificate of Public Convenience and Necessity

April 23, 2002.

Take notice that on April 18, 2002, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP01–45–002 an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations to amend the certificate of public convenience and necessity issued to CIG on January 30, 2002 in Docket Nos. CP01–45–000 and CP01–45–001, all as more fully set forth in the application which is on file with the Commission and open to 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).

The January 30, 2002 certificate of public convenience and necessity (January 30 Order) authorized CIG to construct, install, own, operate and maintain pipeline and compression facilities on its interstate pipeline system in Colorado to provide up to 282,000 Dth per day of firm transportation capacity for electric generators and local distribution companies along the eastern slope of the Rocky Mountain Front Range. Among the authorized facilities to be installed were two new 2,225 horsepower (ISO rated) natural gas fired reciprocating engines along with appurtenant facilities at CIG's existing Fort Lupton Compressor Station in Weld County, Colorado.

Based upon operational data from similar existing units at the Fort Lupton Compressor Station and consultations with CIG's equipment manufacturer, CIG now proposes to install a single 4,445 horsepower (ISO rated) natural gas fired reciprocating engine at the Fort Lupton Compressor Station in lieu of the two units authorized in the January 30 Order. CIG asserts that the single unit will be able to provide the proposed services and will have lower air quality impacts and will lower CIG's estimated capital costs by about $969,500.

Any questions concerning this application may be directed to Robert T. Tomlinson, Director, Regulatory Affairs Department, Colorado Interstate Gas Company, P.O. Box 1087, Colorado

Springs, Colorado 80944; telephone (719) 520–3788.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before May 3, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–10433 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP94–2–011]

Columbia Gas Transmission Corporation; Notice of Refund Report

April 23, 2002.

Take notice that on March 22, 2002, Columbia Gas Transmission Corporation (Columbia) tendered for filing with the Federal Energy Regulatory Commission its Refund Report made to comply with the April 17, 1995 Settlement in Docket No. GP94–2, *et al.* as approved by the Commission on June 15, 1995.

Columbia states that on February 20, 2002, it made refunds, as billing credits or checks, in the amount of $308,553.40. The refunds represent deferred tax refunds received from Trailblazer Pipeline Company and Overthrust Pipeline Company. The refunds were made pursuant to Article VIII, Section E of the Settlement using the allocation percentages shown on Appendix G, Schedule 5 of the Settlement.

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 on or before April 30, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 02–10439 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–228–000]

Eastern Shore Natural Gas Company; Notice of Interruptible Revenue Sharing Report

April 23, 2002.

Take notice that on April 17, 2002 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing its Interruptible Revenue Sharing Report pursuant to Section 37 of the General Terms and Conditions of its FERC Tariff.

Eastern Shore states that it intends to credit a total of $197,506, including interest of $6,437 to its firm transportation customers on July 1, 2002. The credit amount represents 90 percent of the net revenues received by Eastern Shore under Rate Schedule IT (in excess of the cost of service allocated to such rate schedule) for the period April 2001 through March 2002.

Eastern Shore states that copies of the filing has been mailed to Eastern Shore's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 30, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–10451 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–400–001 and RP01–5–004]

Enbridge Pipelines (Midla) Inc. (Formerly Mid Louisiana Gas Company); Notice of Compliance Filing

April 23, 2002.

Take notice that on April 12, 2002, Enbridge Pipelines (Midla) Inc., formerly Mid Louisiana Gas Company, (Midla) filed the revised tariff sheets listed in Appendix A to the filing in compliance with the Commission's March 14, 2002, order in these proceedings.

Midla states that complete copies of its filing are being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable 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. 02–10447 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–166–001]

Florida Gas Transmission Company; Notice of Compliance Filing

April 23, 2002.

Take notice that on April 17, 2002, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective April 1, 2002:

Substitute Fourth Revised Sheet No. 528
Substitute Third Revised Sheet No. 529
Substitute Fourth Revised Sheet No. 530
Substitute Third Revised Sheet No. 531
Substitute Third Revised Sheet No. 532
Substitute Fourth Revised Sheet No. 533
Original Sheet No. 533A
Substitute Fourth Revised Sheet No. 534
Substitute Fourth Revised Sheet No. 535
Substitute First Revised Sheet No. 535.01
Substitute Third Revised Sheet No. 535A
Substitute Third Revised Sheet No. 536
Substitute Third Revised Sheet No. 537
Substitute Third Revised Sheet No. 538
Substitute Original Sheet No. 538A
Substitute Original Sheet No. 538B
Substitute Original Sheet No. 538C
Substitute Original Sheet No. 538D
Substitute Third Revised Sheet No. 539
Substitute Fourth Revised Sheet No. 540
Substitute Fourth Revised Sheet No. 541
Substitute Fourth Revised Sheet No. 542

FGT states that on December 1, 1999, in Docket No. CP00–40–000, FGT filed for authorization to expand the capacity of its system in order to provide incremental firm transportation service pursuant to Rate Schedule FTS–2 (''Phase V Certificate Application''). Included as part of the Phase V Certificate Application were the Phase V shippers' FTS–2 service agreements. FGT states that in its Preliminary Determination on Nonenvironmental Issues dated November 22, 2000 (''PD'') the Commission noted that these service agreements contained certain variations from the FTS–2 Form of Service Agreement contained in FGT's Tariff. The PD directed FGT ''to refile them so that they conform with the FTS–2 Form of Service Agreement in its tariff or to develop a generally applicable FTS–2 Form of Service Agreement to conform with the Phase V agreements.''

FGT further states that on February 28, 2002, in Docket No. RP02–166–000, FGT filed tariff revisions to its FTS–2 Form of Service Agreement (''February 28 Filing'') in response to the Commission's requirements in the PD. The February 28 Filing was rejected by Commission order issued March 28, 2002 (''March 28 Order''). The March 28 Order directs FGT to file tariff changes modifying its FTS–2 Form of Service Agreement to match the provisions of the Phase V shippers' FTS–2 service agreements. In addition, FGT is instructed to include a narrative explanation and a matrix that matches up each Phase V contract provision with each proposed FTS–2 Form Agreement provision, including justification for any contract provision that deviates from the proposed FTS–2 Form Agreement. The ordering paragraphs of the March 28 Order further direct FGT to make these changes within twenty days from the issue date of the order and to make the terms and conditions of service under the Phase V contracts available to all new FTS–2 shippers. FGT states that the instant filing is submitted in compliance with the March 28 Order. The instant filing also includes minor corrections, as well as changes to update or clarify certain provisions contained in the FTS–2 Form Agreement.

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. 02–10450 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494]

Grand River Dam Authority; Notice of Project Visit

April 23, 2002.

Take notice that Commission staff will be visiting the Pensacola Project (FERC No. 1494) on Wednesday, May 1, 2002. The primary purpose of the project visit is to observe existing land use and environmental resource conditions at the site for the proposed expansion of Arrowhead Marina on the Duck Creek arm of Grand Lake O' The Cherokees. Commission staff also will be observing existing site conditions at other locations on Duck Creek that are associated with other pending Commission proceedings involving non-project uses and occupancies of project lands and waters. You may accompany staff during the project visit.

The project visit will begin at 9:00 a.m. at the Arrowhead Marina, located off State Route 85 in Delaware County near Ketchum, Oklahoma. Other Duck Creek areas will be visited during the day on a priority basis and as time allows. All participants are expected to provide their own means of transportation.

If you have any questions concerning this project visit, please contact Steve Naugle at (202) 219–2805.

Magalie R. Salas,

Secretary.

[FR Doc. 02–10441 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–155–000]

Gulf South Pipeline Company, L.P.; Notice of Application

April 23, 2002.

On April 12, 2002, Gulf South Pipeline Company (Gulf South), 20 East Greenway, Houston, Texas 77046 filed an application in Docket No. CP02–155–000 pursuant to Section 7(c) of the Natural Gas Act (NGA), as amended, and the Federal Energy Regulatory Commission's (Commission) Rules and Regulations, an application for the following: (i) a certificate of public convenience and necessity and all other necessary authorizations and waivers for Gulf South to lease, develop, construct, operate, and maintain certain natural gas storage and related facilities at the Napoleonville salt dome in Assumption, Parish, Louisiana for the purpose of injecting, storing, and withdrawing natural gas in interstate commerce (collectively referred to as the ''Magnolia Gas Storage Facility''), (ii) authorization for offer firm storage services under a new Rate Schedule FSS–M, (iii) authorization to offer storage services from the Magnolia Gas Storage Facility at market-based rates and, (iv) a grant of such other authorizations and waivers as may be necessary, all as more throughly described in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call (202)208–2222 for assistance).

Gulf South respectfully requests that the Commission issue a certificate of public convenience and necessity and all other necessary authorizations and waivers on or before October 17, 2002. Issuance of a certificate by that data will enable Gulf South to commence construction of those compressor station facilities, pipelines, and related facilities necessary to place the two existing natural gas storage caverns (hereinafter, ''Wells 13/14'') in service on or about October 1, 2003.

Any questions regarding this application should be directed to J. Kyle Stephens, Director of Certificates, Gulf South Pipeline Company, LP, 20 East Greenway Plaza, Houston, Texas, 77046, phone: (713) 544–7309, fax: (713) 544–4818, email: *Kyle.stephens@gulfsouthpl.com*.

Specifically, Gulf South proposes to lease Well 13/14 from Dow Hydrocarbons and Resources, Inc. (''Dow'') which are located on Dow''s property in Assumption Parish, Louisiana, and construct and operate the compression facilities, pipelines, and related facilities necessary to connect Wells 13/14 to Gulf South's existing transmission system. Wells 13/14 have a maximum capacity of approximately 8 Bcf, comprising 4.1 Bcf of working and 3.1 Bcf of cushion gas capacity. Wells 13/14 will have approximately 200 MMcf per day of injection and 400 MMcf per day of withdrawal capability. Gulf South proposes to integrate Wells 13/14 with its existing interstate pipeline system through the construction and operation of (1) approximately 1.63 miles of 24-inch and 2.07 miles of 30-inch natural gas pipeline, (2) approximately 9,470 horsepower of compression, related piping, valves, controls, and buildings, (3) dehydration facilities, other appurtenant, auxiliary facilities, and (4) two bidirectional metering stations and one regulating station.

Gulf South also proposes to drill, mine, and operate a new natural gas salt dome storage well and to construct, and operate the associated piping facilities (''Gulf South No. 1''). Gulf South No. 1 will have a proposed capacity of 10.5 Bcf, consisting of up to 6.5 Bcf of working and 4.5 Bcf cushion gas capacity. Gulf South No. 1 will have approximately 600 MMcf per day withdrawal capacity and 300 MMcf per day injection capability. The facilities related to Gulf South No.1 include the (1) well pad and access road, (2) wellhead facilities (including casing), (3) raw mining water supply and brine return system, and (4) the ethane/propane pad supply system.

Gulf South proposes to provide firm storage service from the Magnolia Gas Storage Facility, under a new Rate Schedule FSS-M, This rate schedule will be developed based upon the operational characteristics of Well 13/14. Gulf South also proposes to provide interruptible storage service from the Magnolia Gas Storage Facility under its current Rate Schedule ISS. Gulf South proposes to charge market-base rates for all storage services offered under both Rate Schedule FSS-M and Gulf South's existing Rate Schedule ISS.

Gulf South requests that the Commission waive compliance with the Section 157.14 requirements to submit Exhibits I, K, L, N, and O, to the extent necessary, with the instant application because Gulf South meets the Commission's criteria for market-base rates and seeks to continue charging market-based rates.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before May 14, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the

proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–10434 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–394–002]

KO Transmission Company; Notice of Compliance Filing

April 23, 2002.

Take notice that on March 5, 2002, KO Transmission Company (KOT) tendered for filing has part of its FERC Gas Tariff, Original Volume No. 1, the following pro forma tariff sheets:

Second Revised Sheet No. 30
Second Revised Sheet No. 52
Second Revised Sheet No. 55
Second Revised Sheet No. 56
First Revised Sheet No. 60
Second Revised sheet No. 99
Second Revised Sheet No. 117
Second Revised Sheet No. 124
Second Revised Sheet No. 125
Second Revised Sheet No. 133
Second Revised Sheet No. 134
Second Revised Sheet No. 135

KOT states that the filing is being made in compliance with the Commission's January 31, 2002 order in this proceeding.

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. 02–10446 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1552–000]

Puget Sound Energy, Inc.; Notice of Filing

April 19, 2002.

Take notice that on April 16, 2002, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a service agreement for Firm Point-To-Point Transmission Service and a service agreement for Non-Firm Point-To-Point Transmission Service with UBS AG, London Branch (UBS AG), as Transmission Customer.

A copy of the filing was served upon UBS AG.

Any person desiring to intervene or to protest this filing should file 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). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: May 7, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–10437 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–157–002]

Transwestern Pipeline Company; Notice of Compliance Filing

April 23, 2002.

Take notice that on April 17, 2002, Transwestern Pipeline Company (Transwestern), tendered for filing as a part of its FERC Gas Tariff, Second Revised Volume No. 1, 2nd Substitute 4th Revised Sheet No. 15, 2nd Substitute 10th Revised Sheet No. 25, and 2nd Substitute 6th Revised Sheet No. 34, proposed to be effective March 4, 2002.

Transwestern states that the above tariff sheets are being filed in compliance with the Commission's February 27, 2002 Order in Docket No. RP02–157–000. Transwestern states that in the Order, the Commission directed Transwestern to file revised tariff sheets that clearly indicate that a shipper on Transwestern's system must have title to the gas it is transporting. Therefore, Transwestern is submitting the second substitute tariff sheets to clarify that the shipper must have title prior to nominating gas receipts and deliveries on Transwestern's system and while such gas is transported on Transwestern's system.

Transwestern 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. 02–10449 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–375–003]

Vector Pipeline L.P.; Notice of Amendment of Negotiated Rate Agreement

April 23, 2002.

Take notice that on March 11, 2002, Vector Pipeline L.P. (Vector) tendered for filing and approval an Amendment, in the form of a revised contract, to a Service Agreement between Vector and Crete Energy Venture, LLC. Vector states that the Amendment removes the right of first refusal provision. Vector requests that the Commission accept and approve the Amendment to be effective February 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–10448 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–5018–004]

Wellesley Rosewood Maynard Mills, L.P.; Notice of Site Review

April 22, 2002.

Wellesley Rosewood Maynard Mills, L.P. (WRMM), licensee for the Clock Tower Place Project (Project), requests to surrender its exemption from licensing for the existing, non-operational Project. On May 14, 2002, the staff of the Office of Energy Projects (OEP) will conduct a site review of the Project. Representatives of WRMM will accompany the OEP staff. All interested parties may meet at 9:30 A.M. at the Project dam. Attendees must provide their own transportation.

For further information, please contact the Commission's Office of External Affairs at (202) 208–1088.

Magalie R. Salas,

Secretary.

[FR Doc. 02–10442 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12094–000, Washington]

Hydro Technology Systems, Inc.; Notice of Availability of Environmental Assessment

April 23, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for exemption from licensing for the Meyers Falls 1910 Hydroelectric Project, located on the Colville River in Stevens County near the city of Kettle Falls, Washington, and has prepared an Environmental Assessment (EA) for the project.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that exempting the project from licensing, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public

inspection. The EA 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).

For further information, contact John Smith at (202) 219–2460.

Magalie R. Salas,

Secretary.

[FR Doc. 02–10444 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered For Filing With the Commission, Soliciting Additional Study Requests, Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

April 23, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–287–009.

c. *Date Filed:* April 8, 2002.

d. *Applicant:* Midwest Hydro Inc.

e. *Name of Project:* Dayton Hydroelectric Project.

f. *Location:* On the Fox River, near Dayton, in La Salle County, Illinois. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Loyal Gake, Midwest Hydro Inc., 116 State St., P.O. Box 167, Neshkoro, WI 54960, (920) 293–4628.

i. *FERC Contact:* Mark Pawlowski, (202) 219–2795, or *mark.pawlowski@ferc.gov*.

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing additional study requests and requests for cooperating agency status:* June 7, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

l. This application is not ready for environmental analysis at this time.

m. *The existing Dayton Hydroelectric Project consists of:* (1) 594-foot-long arch-buttress uncontrolled fixed crest overflow concrete dam; (2) a 200-foot-long left earthen embankment; (3) a concrete head gate structure with four 15.5-foot-wide and 9.5 foot-high wooden gates located at the right abutment; (4) a 900-foot-long power canal; (5) a 200 acre impoundment; (6) a powerhouse containing three turbines with an installed capacity of 3,680 kW; and (7) appurtenant facilities. The applicant estimates that the total average annual generation would be 14,200 megawatthours. All generated is sold to the Illinois Power Company.

n. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

o. With this notice, we are initiating consultation with the Illinois State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

p. Procedural schedule and final amendments: The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing

Notice of application is ready for environmental analysis

Notice of the availability of the draft NEPA document

Notice of the availability of the final NEPA document

Order issuing the Commission's decision on the application

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. 02–10440 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of License and Soliciting Comments, Motions To Intervene, and Protests

April 23, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of License.

b. *Project No.:* 11282–010.

c. *Date Filed:* April 3, 2002.

d. *Applicant:* Summit Hydropower, Inc.

e. *Name of Project:* Gainer Dam.

f. *Location:* On the North Branch of the Pawtuxet River in Providence County, Rhode Island. The project does not utilize federal or tribal lands.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Duncan S. Broatch, Summit Hydropower, Inc., 67 May Brook Road, Woodstock, Connecticut 06281, (860) 928–1978.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing motions to intervene, protests, comments:* May 23, 2002.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2008(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Please include the project number (P–11282–010) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners

filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. *Description of the Request:* The licensee indicates that finance conditions prevent it from rehabilitating the existing 1500-kW generating unit and installing a new 70-kW generating unit. No construction has commenced.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–10443 Filed 4–26–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7160–7]

Notice of Final Decision To Grant Vickery Environmental, Incorporated a Modification of an Exemption From the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984 Regarding Injection of Hazardous Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision on a request to modify an exemption from the Hazardous and Solid Waste Amendments of the Resource Conservation and Recovery Act.

SUMMARY: Notice is hereby given by the Environmental Protection Agency (EPA or Agency) that a modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA) has been granted to Vickery Environmental, Inc. (VEI) of Vickery, Ohio. This modification allows VEI to continue to inject three (3) RCRA-regulated hazardous wastes which will be banned from land disposal on May 20, 2002, as a result of regulations promulgated in the **Federal Register** (FR) on November 20, 2001 (66 FR 58258), into four Class I injection wells at the Vickery, Ohio, facility. As required by 40 CFR part 148, VEI has demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the injection zone utilized by VEI's waste disposal facility located near Vickery, Ohio, for as long as the newly-exempted wastes remain hazardous. This decision constitutes a final Agency action for which there is no administrative appeal.

DATES: This action is effective as of May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Harlan Gerrish, Lead Petition Reviewer, USEPA, Region 5, telephone (312) 886–2939. Copies of the petition and all pertinent information relating thereto are on file and are part of the Administrative Record. It is recommended that you contact the lead reviewer prior to reviewing the Administrative record.

SUPPLEMENTARY INFORMATION:

I. Background

Chemical Waste Management (CWM), the predecessor of VEI, submitted a petition for an exemption from the restrictions on land disposal of hazardous wastes on January 19, 1988. Revised documents were received on December 4, 1989, and several supplemental submittals were subsequently made. The exemption was granted on August 7, 1990. On September 12, 1994, CWM submitted a petition to modify the exemption to include wastes bearing 23 additional RCRA wastes codes. Region 5 reviewed documents supporting the request and granted the modification of the exemption on May 16, 1995. A notice of the modification appeared on June 5, 1995, at 60 FR 29592 *et seq.* On April 9, 1996, CWM submitted a petition to again modify the exemption to allow 91 additional RCRA waste codes. Region 5 reviewed documents supporting the request and granted the modification on the exemption on June 24, 1996. A notice of the modification appeared on July 15, 1996, at 61 FR 36880 *et seq.* Again on May 13, 1997, CWM submitted a request to add 11 waste codes to the list. Region 5 reviewed the evidence submitted by CWM and granted the request. Notice of the approval appeared on August 12, 1997 (63 FR 43109). On October 13, 1997, CWM notified the EPA that the name of the operator of the Vickery facility would become Waste Management of Ohio (WMO). This change was acknowledged by EPA through a letter added to the Administrative Record on November 10, 1997. On August 28, 1998, WMO requested that two additional wastes codes be approved for injection. Notice of the approval appeared on December 10, 1998 (63 FR 68284). In the same year, on November 5, 1998, WMO submitted a petition to exempt four additional waste codes. Approval of this petition appeared on February 10, 1999 (64 FR 6650). On January 24, 2000, Waste Management of Ohio informed EPA of a corporate reorganization and subsequent name change from Waste Management of Ohio to Vickery Environmental, Inc. This change was acknowledged by EPA through a letter added to the Administrative Record on

March 9, 2000. On March 20, 2001, VEI requested that two wastes, designated as K174 and K175, be added to the list of wastes exempted for injection at VEI. This request was approved on May 23, 2001, and notice of the request appeared in the **Federal Register** on April 25, 2001 (66 FR 28464–28466).

The rule promulgated on November 20, 2001, bans K176, K177, and K178 from injection after May 20, 2002, unless VEI's exemption is modified to allow injection of those wastes. As K-coded wastes, the codes represent a number of chemicals, all of which have already been approved for injection at Vickery under other waste codes. After review of the material submitted, the EPA has determined, as required by 40 CFR 148.20(f), that there is a reasonable degree of certainty that the hazardous constituents contained in the wastes bearing the codes to be banned will behave hydraulically and chemically like wastes for which VEI was granted its original exemption and will not migrate from the injection zone in hazardous concentrations within 10,000 years. The injection zone is the Mt. Simon Sandstone and the Rome, Conasauga, Kerbel, and Knox Formations. The confining zone is comprised of the Wells Creek and Black River Formations.

LIST OF RCRA WASTE CODES APPROVED FOR INJECTION

D001	F010	K035	K115	P016	P076	P201	U050	U106	U158	U215	U389
D002	F011	K036	K116	P017	P077	P202	U051	U107	U159	U216	U390
D003	F012	K037	K117	P018	P078	P203	U052	U108	U160	U217	U391
D004	F019	K038	K118	P020	P081	P204	U053	U109	U161	U218	U392
D005	F020	K039	K123	P021	P082	P205	U055	U110	U162	U219	U393
D006	F021	K040	K124	P022	P084	U001	U056	U111	U163	U220	U394
D007	F022	K041	K125	P023	P085	U002	U057	U112	U164	U221	U395
D008	F023	K042	K126	P024	P087	U003	U058	U113	U165	U222	U396
D009	F024	K043	K131	P026	P088	U004	U059	U114	U166	U223	U400
D010	F025	K044	K132	P027	P089	U005	U060	U115	U167	U225	U401
D011	F026	K045	K136	P028	P092	U006	U061	U116	U168	U226	U402
D012	F027	K046	K140	P029	P093	U007	U062	U117	U169	U227	U403
D013	F028	K047	K141	P030	P094	U008	U063	U118	U170	U228	U404
D014	F032	K048	K142	P031	P095	U009	U064	U119	U171	U234	U407
D015	F034	K049	K143	P033	P096	U010	U066	U120	U172	U235	U408
D016	F035	K050	K144	P034	P097	U011	U067	U121	U173	U236	U409
D017	F037	K051	K145	P036	P098	U012	U068	U122	U174	U237	U410
D018	F038	K052	K147	P037	P099	U014	U069	U123	U176	U238	U411
D019	F039	K060	K148	P038	P101	U015	U070	U124	U177	U239	
D020	K001	K061	K149	P039	P102	U016	U071	U125	U178	U240	
D021	K002	K062	K150	P040	P103	U017	U072	U126	U179	U243	
D022	K003	K069	K151	P041	P104	U018	U073	U127	U180	U244	
D023	K004	K071	K156	P042	P105	U019	U074	U128	U181	U246	
D024	K005	K073	K157	P043	P106	U020	U075	U129	U182	U247	
D025	K006	K083	K158	P044	P108	U021	U076	U130	U183	U248	
D026	K007	K084	K159	P045	P109	U022	U077	U131	U184	U249	
D027	K008	K085	K160	P046	P110	U023	U078	U132	U185	U271	
D028	K009	K086	K161	P047	P111	U024	U079	U133	U186	U277	
D029	K010	K087	K169	P048	P112	U025	U080	U134	U187	U278	
D030	K011	K088	K170	P049	P113	U026	U081	U135	U188	U279	
D031	K013	K093	K171	P050	P114	U027	U082	U136	U189	U280	
D032	K014	K094	K172	P051	P115	U028	U083	U137	U190	U328	
D033	K015	K095	K174	P054	P116	U029	U084	U138	U191	U353	
D034	K016	K096	K175	P056	P118	U030	U085	U139	U192	U359	
D035	K017	K097	K176	P057	P119	U031	U086	U140	U193	U364	
D036	K018	K098	K177	P058	P120	U032	U087	U141	U194	U365	
D037	K019	K099	K178	P059	P121	U033	U088	U142	U196	U366	
D038	K020	K100	P001	P060	P122	U034	U089	U143	U197	U367	
D039	K021	K101	P002	P062	P123	U035	U090	U144	U200	U372	
D040	K022	K102	P003	P063	P127	U036	U091	U145	U201	U373	
D041	K023	K103	P004	P064	P128	U037	U092	U146	U202	U375	
D042	K024	K104	P005	P065	P185	U038	U093	U147	U203	U376	
D043	K025	K105	P006	P066	P188	U039	U094	U148	U204	U377	
F001	K026	K106	P007	P067	P189	U041	U095	U149	U205	U378	
F002	K027	K107	P008	P068	P190	U042	U096	U150	U206	U379	
F003	K028	K108	P009	P069	P191	U043	U097	U151	U207	U381	
F004	K029	K109	P010	P070	P192	U044	U098	U152	U208	U382	
F005	K030	K110	P011	P071	P194	U045	U099	U153	U209	U383	
F006	K031	K111	P012	P072	P196	U046	U101	U154	U210	U384	
F007	K032	K112	P013	P073	P197	U047	U102	U155	U211	U385	
F008	K033	K113	P014	P074	P198	U048	U103	U156	U213	U386	
F009	K034	K114	P015	P075	P199	U049	U105	U157	U214	U387	

II. Conditions

General conditions of this exemption are found at 40 CFR part 148. The exemption granted to VEI on August 7, 1990, included a number of specific conditions. Conditions numbered (1), (2), (3), (4), and (9) remain in force. Construction of a monitoring well required under condition 5 has been completed, and the required monitoring will continue through the life of the facility. Conditions numbered (6), (7), and (8) have been fully satisfied. The results of the work carried out under

these conditions confirms that the model used to simulate fluid movement within the injection zone for the next 10,000 years is valid and results of the simulation bound the region of the injection zone within which the waste will be contained.

Timothy C. Henry,

Acting Director, Water Division, Region 5.

[FR Doc. 02–10418 Filed 4–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7202–9]

Office of Research and Development EPA Board of Scientific Counselors, Executive Committee Meeting—Closed

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The EPA Board of Scientific Counselors (BOSC) will hold an Executive meeting on May 13, 2002. Pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 and section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), EPA has determined that the May 13, 2002, meeting will be closed to the public. The topic of discussion is to recommend new Board members to the Assistant Administrator for Research and Development to serve on the BOSC. In making these recommendations, the members will need to have full and frank discussions regarding potential nominees. Such personnel issues, where disclosure would constitute an unwarranted invasion of personal privacy, are protected from disclosure by exemptions 6 of section 552(b)(c) of the U.S.C. In accordance with the provisions of the Federal Advisory Committee Act, minutes of the May 13, 2002, discussions will be kept for Agency and Congressional review.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Reserach and Development, NCER (MC 8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone: (202) 564–6853 or e-mail at: *hamilton.shirley@epa.gov/*

Dated: April 8, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–10419 Filed 4–26–02; 8:45 am]

BILLING CODE 6560–50–M

COUNCIL ON ENVIRONMENTAL QUALITY

Annual Report on Endangered Species Act Exemption

AGENCY: Council on Environmental Quality.

ACTION: Availability of report.

SUMMARY: This notice announces the availability of the Annual Report submitted by Basin Electric Power Cooperative, as Project Manager for the Missouri Basin Power Project in the matter of an exemption granted from the requirements of the Endangered Species Act to Grayrocks Dam. The lead federal agency in the project is the Rural Electrification Administration.

DATES: The report was submitted to the Council on January 18, 2002. The report was received by the Council on April 17, 2002.

ADDRESSES: The Annual Report is available from Basin Electric Power Cooperative, 1717 East Interstate Avenue, Bismarck, ND 58503–0564. Telephone: (701) 223–0441

FOR FURTHER INFORMATION CONTACT: Dinah Bear, General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503 Telephone: (202) 395–7421

SUPPLEMENTARY INFORMATION: Under the Endangered Species Act, any agency granted an exemption under 16 U.S.C. 1536(h) must submit to the Council on Environmental Quality an annual report describing its compliance methods with the mitigation and enhancement measures prescribed by 16 U.S.C. 1536(1)(2). This subsection further requires that the Council publish availability of the report in the **Federal Register**.

Dated: April 23, 2002.

Dinah Bear,

General Counsel.

[FR Doc. 02–10408 Filed 4–26–02; 8:45 am]

BILLING CODE 3125–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 22, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 28, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0645.

Title: Part 17—Antenna Registration.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, state, and not-for-profit institutions, and state, local or tribal governments.

Number of Respondents: 25,600.

Estimated Time Per Response: Burden for disclosure—6 minutes; burden for posting—12 minutes; burden for notifications—3 to 15 minutes; burden for reporting requirement—15 minutes.

Frequency of Response: Recordkeeping requirement; third party disclosure requirement, on occasion reporting requirement.

Total Annual Burden: 40,329 hours.

Total Annual Cost: $3,300,000.

Needs and Uses: The requirements in Part 17 are necessary to implement a uniform registration process for owners of antenna structures. The information collection requirements are: (1) Antenna structure owners will be required to provide tenant licensees with a copy of the antenna registration; (2) display the registration number on or around the antenna structure; (3) notification of improperly function of antenna structure lights; and (4) recording of improperly function of antenna structure lights. The information will be used by the Commission during investigations related to air safety or radio frequency interference. A registration number will be issued to identify antenna structure owners in order to enforce Congressionally-mandated provisions related to the antenna structure owner.

OMB Control No.: 3060–0584.

Title: Administration of U.S.-Certified Accounting Authorities in Maritime Mobile and Maritime Mobile-Satellite Radio Services.

Form No.: FCC Forms 44 and 45.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit.

Number of Respondents: 25 respondents; 50 responses.

Estimated Time Per Response: 3 hours.

Frequency of Response: Annual and semi-annual reporting requirements.

Total Annual Burden: 150 hours.

Total Annual Cost: N/A.

Needs and Uses: Title 47 CFR part 3 established final rules related to the administration of accounting authorities. The rules are required to ensure adherence to international settlement procedures. The collection requirement will provide information necessary to determinate whether an applicant is qualified to act as an accounting authority.

The forms are being revised to include the Federal Communications Commission Registration Number (FRN). The information will be used by the Commission to determine the eligibility of applicants for certification as an accounting authority, to create internal studies of settlement activities and ensure compliance, and to identify accounting authorities to the International Telecommunications Union for disclosure in their List of Ship Stations Report.

OMB Control No.: 3060–0812.

Title: Assessment and Collection of Regulatory Fees.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, state, and not-for-profit institutions.

Number of Respondents: 635,738.

Estimated Time Per Response: .5 hours.

Frequency of Response: Recordkeeping requirement and on occasion reporting requirement.

Total Annual Burden: 63,574 hours.

Total Annual Cost: N/A.

Needs and Uses: The FCC, in accordance with the Telecommunications Act of 1934, as amended, (and by Congress), is required to assess and collect regulatory fees from its licensees and regulatees in order to recover its costs incurred in conducting enforcement, policy and rulemaking, international and user information activities. The purpose for the requirements are to: (1) facilitate the statutory provisions that non-profit entities may be exempt from payment of regulatory fees, and (2) facilitate the FCC's ability to audit regulatory fee payment compliance I the Commercial Mobile Radio Service (CMRS) industry.

In order to develop a Schedule of Regulatory Fees, the FCC must as accurately as possible, estimate the number of payment units and distribute the costs. These estimates must be adjusted to account for any licensees or regulatees that are exempt from payment of regulatory fees. Therefore, the FCC is requiring all licensees and regulatees that claim exemption as a non-profit entity to provide one-time documentation sufficient to establish their non-profit status. Additionally, any newly licensed or operating non-profit entities must submit their documentation of their exempt status within 60 days of receipt of license, authorization, permit, or of commencing operation. Further, the FCC is requesting that it be similarly notified if for any reason that status changes. This documentation will likely take the form of an Internal Revenue Service (IRS) Determination Letter, a state charter indicating non-profit status, proof of church affiliation, *et al.*

In order to facilitate audits of regulatory fee payments compliance in the CMRS industry, the Commission must require these licensees to submit, upon request, business data they relied upon to calculate the amount of the aggregate regulatory fees owed.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–10480 Filed 4–26–02; 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 May 13, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Commerce Bancshares, Inc., Brownsville, Tennessee; to retain Citizens Corporation, Franklin, Tennessee, and indirectly acquire Financial Data Technology Corporation, Franklin, Tennessee, and Citizens & Peoples Insurance, Inc., Grant, Alabama, and thereby engage in making, acquiring, brokering, or servicing loans or other extensions of credit; providing data processing services, and general insurance agency services in a town of less than 5,000 in population, pursuant to §§ 225.28(b)(1), 225.28(b)(11)(iii)(A), and 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, April 23, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–10384 Filed 4–26–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–45]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: National Hospital Discharge Survey OMB No. 0920–0212—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). The National Hospital Discharge Survey (NHDS), which has been conducted continuously by the National Center for Health Statistics, CDC, since 1965, is the principal source of data on in-patient utilization of short-stay, non-Federal hospitals and is the only annual source of nationally representative estimates on the characteristics of discharges, the lengths of stay, diagnoses, surgical and non-surgical procedures, and the patterns of use of care in hospitals in various regions of the country. It is the benchmark against which special programmatic data sources are compared. Data collected through the NHDS are essential for evaluating health status of the population, for the planning of programs and policy to elevate the health status of the Nation, for studying morbidity trends, and for research activities in the health field. NHDS data have been used extensively in the development and monitoring of goals for the Year 2000 and 2010 Health Objectives. In addition, NHDS data provide annual updates for numerous tables in the Congressionally-mandated NCHS report, Health, United States. Data for the NHDS are collected annually on approximately 300,000 discharges from a nationally representative sample of noninstitutional hospitals, exclusive of Federal, military and Veterans' Administration hospitals. The data items collected are the basic core of variables contained in the Uniform Hospital Discharge Data Set (UHDDS) in addition to two data items (admission type and source) which are identical to those needed for billing of in-patient services for Medicare patients. Data for approximately forty-five percent of the responding hospitals are abstracted from medical records while the remainder of the hospitals supply data through commercial abstract service organizations, state data systems, in-house tapes or printouts. There is no actual cost to respondents since hospital staff who actively participate in the data collection effort are compensated by the government for their time.

Medical record abstracts	Number of respondents (hospitals)	Number of responses/ respondent	Average burden/ response (in hours)	Total burden hours
Primary Procedure Hospitals	68	250	5/60	1,417
Alternate Procedure Hospitals	130	250	1/60	542
In-House Tape or Printout Hospitals	80	12	12/60	192
Update Form (Abstract Service Hospital)	156	2	2/60	10
Induction Forms	15	1	2	30
Special Studies	100	23	12/60	460
Total				2,651

Dated: April 19, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 02–10399 Filed 4–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–44]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: National Disease Surveillance Program—I. Case Reports (0920–0009)—Extension—National Center for Infectious Disease (NCID), Centers for Disease Control and Prevention (CDC). Formal surveillance of 20 separate reportable diseases has been ongoing to meet the public demand and scientific interest for accurate, consistent, epidemiologic data. These ongoing diseases include: bacterial meningitis and bacteremia, dengue, hantavirus, HIV/AIDS, Idiopathic CD4+T-lymphocytopenia, Kawasaki syndrome, Legionellosis, leprosy, lyme disease, malaria, Mycobacterium avium Complex Disease, plague, Q Fever, Reye Syndrome, tick-borne Rickettsial Disease, toxic shock syndrome, toxocariasis, trichinosis, typhoid fever, and viral hepatitis. Case report forms enable CDC to collect demographic, clinical, and laboratory characteristics of cases of these diseases. This information is used to direct epidemiologic investigations, to identify and monitor trends in reemerging infectious diseases or emerging modes of transmission, to search for possible causes or sources of the diseases, and to develop guidelines for the prevention of treatment. It is also used to recommend target areas in most need of vaccinations for certain diseases and to determine development of drug resistance.

Because of the distinct nature of each of the diseases, the number of cases reported annually is different for each. The total estimated annualized burden is 34,097 hours. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/respondent (in hours)	Total burden (in hours)
Health Care Workers	55	111.10	5.58	34,097
Total				34,097*

* An average of the total estimated burden hours.

Dated: April 19, 2002.

Nancy E. Cheal,

Acting Associate Director for Planning, Policy, and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 02–10400 Filed 4–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–46]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Examination of HIV Stigmatizing Beliefs and Attitudes in a Nationally Representative Cohort—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention, (CDC).

CDC, National Center for HIV, STD and TB Prevention, Division of HIV/AIDS Prevention-Intervention, Research, and Support (DHAP–IRS) propose a brief follow-up study of a nationally representative sample of individuals that completed short questionnaires about HIV stigmatizing attitudes in the summer of 2000. The original study relied on a new technology, the Web-enabled television, to collect data from individuals in their homes. This same technique will be be used to gather data in the proposed study. The information obtained will contribute to an understanding of stigmatizing attitudes, investigate the effectiveness of a stigma-reduction strategy with the potential to reach broadly into a target audience, and guide future research and intervention efforts in this area.

HIV stigma inhibits HIV testing and positive serostatus disclosure, and thus increases the risk of HIV infection. Although there is evidence that, in the general population, HIV stigmatizing attitudes and beliefs may have decreased somewhat over the last 15 years, there is no information about the stability of HIV stigmatizing attitudes and beliefs over time within the same individuals. Understanding patterns of stigma will make it possible to identify effective strategies for stigma reduction, and these could carry a significant public health benefit.

HIV stigma is a pervasive societal problem, and a meaningful decrease in stigma will require interventions that reach large numbers of people. The electronic mass media reach millions of people, and nationally televised broadcasts have been shown to increase knowledge of health issues, promote attitudes and norms that support prevention, and model prevention behaviors. Serialized daytime television dramas may offer some particular advantages for effective dissemination of anti-stigma messages. A large proportion of their audiences, compared with other demographic groups, report getting their health information from television. In addition, the dramatic presentation of health-relevant messages may make them more noticeable and memorable. The CDC collaborates with writers of television shows to ensure that the health-related information they present is accurate and timely. After collaboration with CDC officials, a long-running, televised, daytime soap opera

introduced a subplot about HIV. The subplot presented information that has the potential to reduce HIV stigmatizing attitudes in viewers. The proposed study will screen all respondents for exposure to this soap opera broadcast and a similar one without an HIV storyline so that the effects of storyline exposure on HIV stigma can be assessed. There is no cost to the respondent.

Respondents	Number of respondents	Number of responses/ respondent	Average Burden Response (in hours)	Average burden Per response (in hours)
Adult non-viewers	3200	1	5/60	267
Adult viewers	300	1	10/60	50
Total				317

Dated: April 19, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–10401 Filed 4–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0133]

Novartis Pharmaceuticals Corp. et al.; Withdrawal of Approval of 38 New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 38 new drug applications (NDAs). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Effective May 29, 2002.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

NDA No.	Drug	Applicant
740	Ovocyclin Dipropionate Injection and Di-Ovocyclin (Estradiol Dipropionate NF).	Novartis Pharmaceuticals Corp., 59 Route 10, East Hanover, NJ 07936.
3–034	Bismakaolin.	The Vale Chemical Co., Inc., 1201 Liberty St., Allentown, PA 18102.
3–353	Tocopherex (Vitamin E) Capsules.	E. R. Squibb & Sons, One Squibb Dr., P.O. Box 191, New Brunswick, NJ 08903–0191.
3–697	Comin Vitamin Capsules.	Forest Pharmaceuticals, Inc., 150 East 58th St., New York, NY 10155–0015.
3–934	Avitol (Vitamin A) Capsules.	Do.
3–962	Sodium Pentobarbital Injection.	Lakeside Laboratories, Milwaukee, WI 53201.
3–993	Beminal Tablets.	Whitehall Laboratories, 685 Third Ave., New York, NY 10017–4076.
4–016	Tonajuve Liquid.	Merrell-National Laboratories, Cincinnati, OH 45215.
5–070	Privine (Naphazoline Hydrochloride USP).	Novartis Pharmaceuticals Corp.
7–012	Vi-Twel (Cyanocobalamin Injection USP).	Berlex Laboratories, Inc., 300 Fairfield Rd., Wayne, NJ 07470–7358.
8–070	Elkosin (sulfisomidine) Tablets and Suspension.	CIBA-GEIGY Corp.
8–418	Pyribenzamine (Tripelennamine Hydrochloride USP) with Zirconium.	Novartis Pharmaceuticals Corp.
8–729	Dorsacaine Ophthalmic Solution.	Sandoz Research Institute, Route 10, East Hanover, NJ 07936.
8–908	InfraRUB Cream.	Whitehall Laboratories
11–073	Wampocaps (niacin) Capsules.	Wallace Laboratories, Cranbury, NJ 08512.
11–123	Vesprin (triflupromazine hydrochloride).	Apothecon, P.O. Box 4500, Princeton, NJ 08543–4500.

NDA No.	Drug	Applicant
11–419	Sterisol Mouthwash and Gargle.	Warner-Lambert Co., 170 Tabor Rd., Morris Plains, NJ 07950.
12–542	Oxalid (oxyphenbutazone) Tablets.	Novartis Pharmaceuticals Corp.
13–273	Nitrofurantoin Tablets.	Albran, Inc., 68–43 Juno St., Forest Hills, NY 11375.
16–000	Sulla (sulfameter) Tablets	Berlex Laboratories, Inc.
17–071	Benzedrine (amphetamine sulfate) Spansule Capsules.	Smith Kline & French Laboratories, 1500 Spring Garden St., P.O. Box 7929, Philadelphia, PA 19101.
17–098	Selenomethionine Se-75 Injection.	Mallinckrodt, Inc., 675 McDonnell Blvd., P.O. Box 5840, St. Louis, MO 63134.
17–109	Prednisone Tablets USP, 20 milligrams (mg).	Roxane Laboratories, Inc., P.O. 16532, Columbus, OH 43216–6532.
17–282	Technetium Tc-99m Sulfur Colloid Kit.	E. I. duPont de Nemours & Co., Inc., 331 Treble Cove Rd., North Billerica, MA 01862.
17–454	Osteoscan (Technetium Tc-99m Etidronate Kit).	Mallinckrodt, Inc.
17–518	Ytterbium Yb-169 DTPA.	3M Health Care Group, 3M Center, St. Paul, MN 55144–1000.
17–678	Technetium Tc-99m Pyrophosphate Kit.	Syncor International Corp., 12847 Arroyo St., Sylmar, CA 91342.
17–704	Dantrium Oral Suspension.	Norwich Easton Pharmaceuticals, Inc., P.O. Box 191, Norwick, NY 13815–00191.
18–102	Medrol (methylprednisolone acetate) Enpak Kit.	The Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199.
18–121	Catarase Ophthalmic Solution.	Novartis Pharmaceuticals Corp.
18–236	ZOMAX (zomepirac sodium) Tablets.	The R. W. Johnson Pharmaceutical Research Institute, Welsh and McKean Rds., Spring House, PA 19477–0776.
18–297	Allopurinol Tablets USP, 100 and 300 mg.	Abbott Laboratories, 100 Abbott Park Rd., Abbott Park, IL 60064.
19–421	Exidine Solution.	Xttrium Laboratories, Inc., 415 West Pershing Rd., Chicago, IL 60609.
50–043	Keflin (cephalothin sodium) Injection.	Lilly Research Laboratories, Lilly Corprate Center, Indianapolis, IN 46285.
50–219	Kafocin.	Do.
50–469	Keflin, Frozen Neutral.	Do.
50–501	Velosef Injection.	Bristol-Myers Squibb Co., P.O. Box 4000, Princeton, NJ 08543–6837.
50–540	Mandol Injection.	Lilly Research Laboratories.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective May 29, 2002.

Dated: March 21, 2002.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 02–10425 Filed 4–26–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Biological Response Modifiers Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting is closed to the public.

Name of Committee: Biological Response Modifiers Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 9, 2002, from 8 a.m. to 6:30 p.m. and on May 10, 2002, from 8 a.m. to 3 p.m.

Location: Hilton Hotel, DC North–Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Gail Dapolito, Center for Biologics Evaluation and Research (HFM–71) or Rosanna L. Harvey, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD, 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12389. Please call the Information Line for up-to-date information on this meeting.

Agenda: On May 9, 2002, at 8 a.m., the committee will receive updates of research programs in the Division of Therapeutic Proteins and the Division of Monoclonal Antibodies; at 9 a.m., the committee will discuss issues related to ooplasm transfer in assisted reproduction. On May 10, 2002, the committee will discuss issues related to inadvertent germline transmission of gene transfer vectors.

Procedure: On May 9, 2002, from 8 a.m. to 8:45 a.m. and from 9 a.m. to 6:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 2, 2002. Oral presentations from the public are scheduled between approximately 3:35 p.m. and 4:05 p.m. on May 9, 2002, and from 11:40 a.m. to 12:10 p.m. on May 10, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 2, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations. On May 9, 2002, from 8:45 a.m. to 9:00 a.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of the review of research programs in the Division of Therapeutic Proteins and Division of Monoclonal Antibodies.

FDA regrets that it was unable to publish this notice 15 days prior to the May 9 and 10, 2002, Biological Response Modifiers Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Biological Response Modifiers Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodation due to a disability, please contact Gail Dapolito or Rosana L. Harvey at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 23, 2002.

Linda A. Suydam,

Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–10508 Filed 4–24–02; 3:29 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0311]

Medical Devices: Class II Special Controls Guidance Document: Endolymphatic Shunt Tube with Valve; Final Guidance for Industry Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Endolymphatic Shunt Tube with Valve; Guidance for Industry and FDA.'' This document describes a means by which the endolymphatic shunt tube with valve may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the**Federal Register**, FDA is publishing a final rule classifying endolymphatic shunt tubes with valve into class II (special controls).

DATES: Submit written or electronic comments on the guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Class II Special Controls Guidance Document: Endolymphatic Shunt Tube with Valve; Guidance for Industry and FDA'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Eric Mann, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 15, 2001 (66 FR 42809), FDA published a proposed rule to reclassify the endolymphatic shunt tube with valve from class III (premarket approval) into class II (special controls) based on new information regarding this device. E. Benson Hood Laboratories, Inc. (Hood Laboratories), submitted the new information in a reclassification petition. FDA also identified the document ''Class II Special Controls Guidance Document: Endolymphatic Shunt Tube with Valve; Draft Guidance for Industry and FDA'' as the special control capable of providing reasonable assurance of safety and effectiveness for this device.

Interested persons were invited to comment on the draft guidance by November 13, 2001. FDA received one comment. The comment, from the petitioner, Hood Laboratories, strongly supported the draft guidance as the proposed special control.

FDA has since revised the draft guidance to provide to manufacturers the option of submitting an abbreviated 510(k) to further reduce regulatory burden.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on ''Class II Special Controls Guidance Document: Endolymphatic Shunt Tube with Valve; Guidance for Industry and FDA.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

In order to receive the document ''Class II Special Controls Guidance Document: Endolymphatic Shunt Tube with Valve; Guidance for Industry and FDA'' via your fax machine, call the CDRH Facts-On-Demand system at 800–

899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt, press 1 to access DSMICA Facts, at second voice prompt press 2, and then enter the document number (791) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains a home page at http://www.fda.gov/cdrh on the Internet for easy access to information that may be downloaded to a personal computer. Updated on a regular basis, the CDRH home page includes device safety alerts; **Federal Register** reprints; information on premarket submissions, including lists of approved applications and manufacturers' addresses; small manufacturers' assistance; information on video conferencing and electronic submissions; Mammography Matters, and other medical device oriented information. The CDRH home page also includes the document ''Class II Special Controls Guidance Document: Endolymphatic Shunt Tube with Valve; Guidance for Industry and FDA'' which may be accessed at http://www.fda.gov/cdrh/ode/guidance/791.html. A search capability for all guidance documents may be found at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available on the Dockets Management Branch Internet site at http://www.fda.gov/ohrms/dockets.

Dated: April 15, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–10427 Filed 4–26–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Maternal and Child Health Federal Set-Aside Program; Special Projects of Regional and National Significance; Sickle Cell Disease and Newborn Screening Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $3.6 million in fiscal year (FY) 2002 funds is available to fund (1) a single cooperative agreement with a national sickle cell disease organization for a national coordinating center, and (2) up to 15 grants for community-based sickle cell disease projects to enhance the Sickle Cell Disease and Newborn Screening program through provision of outreach and counseling efforts. Eligibility is open to any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450(b)). Awards will be made under the program authority of section 501(a)(2) of the Social Security Act, the Maternal and Child Health (MCH) Federal Set-Aside Program (42 U.S.C. 701(a)(2)), or ''SPRANS.'' Funds for these awards were appropriated under Public Law 107–116. Up to $750,000 will be available for one cooperative agreement; up to $2.87 million will be available for community-based grants. Awards are made for a grant period of one year.

DATES: Applicants for this program are expected to notify the Maternal and Child Health Bureau (MCHB) by May 20, 2002. Notification of intent to apply can be made in one of three ways: telephone: 301–443–1080; email *cdiener@hrsa.gov;* mail, MCHB, HRSA; Division for Children with Special Health Care Needs, Parklawn Building, Room 18A–19; 5600 Fishers Lane; Rockville, MD 20857. The deadline for receipt of applications is June 29, 2002. Applications will be considered ''on time'' if they are either received on or before the deadline date or postmarked on or before the deadline date. The projected award date is September 1, 2002.

ADDRESSES: To receive a complete application kit, applicants may telephone the HRSA Grants Application Center at 1–877–477–2123 (1–877–HRSA–123) beginning April 29, 2002, or register on-line at: *http://www.hrsa.gov/,* or by accessing *http://www.hrsa.gov/g_order3.htm* directly. This program uses the standard Form PHS 5161–1 (rev. 7/00) for applications (approved under OMB No. 0920–0428). Applicants must use the appropriate Catalog of Federal Domestic Assistance (CFDA) number 93.110A when requesting application materials. The CFDA is a Government wide compendium of enumerated Federal programs, projects, services, and activities that provide assistance. All applications should be mailed or delivered to: Grants Management Officer (MCHB), HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg MD, telephone: 1–877–HRSA–123 (477–2123), e-mail: *hrsagac@hrsa.gov.*

This application guidance and the required form for the Sickle Cell Disease and Newborn Screening grant program may be downloaded in either WordPerfect 6.1 or Adobe Acrobat format (.pdf) from the MCHB HomePage at *http://www.mchb.hrsa.gov/.* Please contact Joni Johns at 301/443–2088 or *jjohns@hrsa.gov/,* if you need technical assistance in accessing the MCHB Home Page via the Internet.

This announcement will appear on the HRSA Home Page at: *http://www.hrsa.gov/.* **Federal Register** notices are found by following instructions at: *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

FOR FURTHER INFORMATION CONTACT: Michele A. Lloyd-Puryear, M.D., Ph.D. 301–443–1080, e-mail: *mpuryear@hrsa.gov* (for questions specific to project activities of the program, program objectives, or the Letter of Intent described above); and Jacquelyn Whitaker, 301/443–1440; e-mail, *jwhitaker@hrsa.gov* (for grants policy, budgetary, and business questions).

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Sickle cell disease (SCD) is an inherited red blood cell condition characterized primarily by chronic anemia and periodic episodes of pain. In affected individuals, the abnormal red blood cells break easily and clog blood vessels to block blood flow to organs and tissues. This process results in anemia, periodic pain episodes, and ultimately can damage tissues and vital organs and lead to increased infections and early death. In the United States, most cases of SCD occur among people of African ancestries. People of Mediterranean, Middle Eastern, and Indian background are also affected. It is estimated that more than 2 million Americans have the sickle cell trait and over 70,000 have the disease. Annually approximately 1,000 newborns are identified with the disease through state newborn screening programs.

Early diagnosis of SCD is critical so that children who have the condition can receive proper interventions. Newborn screening for SCD followed by parental health education, enrollment in comprehensive care, initiation of penicillin prophylaxis and anti-pneumococcal vaccination within the first two months of life can prevent death from severe infections.

The Federal MCHB has long recognized the significance of SCD. In the mid 1960s, MCHB developed and disseminated SCD educational materials nationally. Following passage of the National Sickle Cell Anemia Control Act in 1972, MCHB, with initial funding from the National Institutes of Health (NIH), provided support for community

based sickle cell clinics to conduct testing, counseling, and education. In the mid 1980s, the Federal MCHB supported the development and implementation of State newborn screening programs for SCD. By 1990, 30 States and jurisdictions had implemented programs with direct Federal support. Although most States and jurisdictions currently have State wide screening programs, the 1987 Consensus Development Conference on Newborn Screening for Sickle Cell and Other Hemoglobinopathies recommendation for universal screening has not been realized.

All State SCD screening programs include a follow-up component. Some, however, fall short of the guidelines recommended by the Council of Regional Networks for Genetic Services (CORN). There are infants with SCD who do not enter into appropriate programs of comprehensive care and do not receive the requisite interventions. Further, follow-up of infants with sickle cell trait or carriers is sub-optimal. While the benefit of carrier notification leads to increased knowledge for the affected infant's family, problems of misunderstanding (infant with the trait perceived as defective), stigmatization, and issues of paternity can also result from carrier notification. It is thus imperative that trait notification and counseling be undertaken with sensitivity and accuracy. In many State SCD programs, parents are notified of the carrier infant's abnormal test results but are left on their own to seek education, genetic counseling, and testing. Many parents do not receive counseling and testing.

Just as important as follow-up in a SCD program is the education component. Patients and families need to remain well informed and be empowered as active participants in service delivery. State SCD programs need to enlist partners in this effort, including primary care providers, subspecialists, and community-based support organizations. In some communities, the staff of the community-based organization can make the initial contact with the affected family and maintain subsequent contact and provide support and education.

Authorization

Section 501(a)(2) of the Social Security Act (42 U.S.C. 701(a)(2)).

Purpose

The purpose of the Sickle Cell Disease and Newborn Screening Program is to support newborns diagnosed with SCD or trait and their families, relying on partnerships among the State newborn screening programs, community-based SCD organizations, comprehensive SCD treatment centers, and health care professionals. Specifically, the program will enhance the follow up component of State SCD screening programs and support community-based projects that provide SCD related education, carrier counseling, and support services.

Through a cooperative agreement, a national SCD organization will partner with families, community based SCD organizations, health care professionals, State agencies and MCHB, and assist in the coordination and implementation of community-based SCD projects funded by this initiative. Further, it will provide an organizational forum for interaction between MCHB and the SCD community to identify and prioritize issues of importance to the SCD community.

The funded community-based SCD projects will partner with State newborn screening programs, comprehensive sickle cell treatment centers, and health care professionals to provide support to infants screened positive for SCD and trait and their families; as well as working cooperatively with each other and the funded national SCD organization to implement a model program of SCD carrier follow-up to include notification, extended family testing, counseling and education of affected individuals and families.

Eligibility

Under SPRANS project grant regulations at 42 CFR part 51a.3, any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450(b)), is eligible to apply for grants and cooperative agreements covered by this announcement. Under the President's initiative, community-based and faith-based organizations that are otherwise eligible and believe they can contribute to HRSA's program objectives are urged to consider this initiative.

Funding Levels/Project Periods

The administrative and funding instrument to be used for the national SCD coordinating center will be a cooperative agreement, in which substantial MCHB scientific and/or programmatic involvement with the awardee is anticipated during the performance of the project. Under the terms of this cooperative agreement, in addition to the required monitoring and technical assistance, Federal responsibilities will include:

(1) Provision of services of experienced federal personnel as participants in the planning and development of all phases of this activity.

(2) Participation, as appropriate, in meetings conducted during the period of the cooperative agreement.

(3) Ongoing review and concurrence with activities and procedures to be established and implemented for accomplishing the scope of work.

(4) Participation in the preparation of project information prior to dissemination.

(5) Participation in the presentation of information on project activities.

(6) Assistance with the establishment of contacts with Federal and State agencies, MCHB grant projects, and other contacts that may be relevant to the project's mission; and referrals to these agencies.

Up to $750,000 will be used to fund the national coordinating center through a cooperative agreement. Up to $2.87 million will be used to fund up to 15 community-based grants within the program. Grantees will be expected to work cooperatively with the national coordinating center also described in this announcement. All awards will be made for one year.

Funding Priorities

Funding priority for the cooperative agreement will be given to an established national SCD organization with clearly demonstrated expertise and national capacity for addressing issues relevant to SCD patients and their families and in which community-based programs play an integral role in its mission.

Funding priority for community-based grants will be given to existing local community-based SCD organizations meeting one of following two priority factors:

(1) A collaborative relationship with the State Title V and newborn screening program and a partnership with a local comprehensive sickle cell treatment center; or

(2) Participation in a cooperative relationship with the national SCD coordinating center and fellow grantees funded by this initiative to collect information and standardize the education and counseling to be offered by the network of local, community-based projects.

An applicant meeting one of these priority factors will be given a 5 point favorable adjustment to the ranking score assigned to that application, on a 100 point scale. There is a maximum of 2 awards per State.

Review Criteria

Applications that are complete and responsive to the guidance will be

evaluated by an objective review panel specifically convened for this solicitation and in accordance with HRSA grants management policies and procedures.

Cooperative agreement applications will be reviewed using the following criteria:

1. Understanding of the problem, solutions, and desired outcome;
2. Quality of the proposal for the coordination and support to be provided to the community-based SCD projects to be funded by MCHB under this initiative;
3. Collaboration between the organization and State newborn screening programs and sickle cell treatment centers and health care professionals;
4. Infrastructure, including sound administrative and management components, necessary to carry out the proposed activities;
5. Expertise and experience of the project staff;
6. Budget request to be commensurate with the proposed activities and well justified;

Applications for community-based grants will be evaluated using the following criteria:

1. Experience in providing outreach, education, and support to parents of newborns determined by newborn screening to have SCD or sickle cell trait;
2. Willingness to engage in a collaborative relationship with the State newborn screening program and a comprehensive sickle cell treatment center;
3. Willingness to participate in a cooperative relationship with the national SCD organization and fellow grantees funded by this initiative to collect information and standardize the education and counseling to be offered by the grantees;
4. Quality of plan for collaboration with partners and conduct of outreach, education, and counseling activities;
5. Infrastructure, including sound administrative and management components, necessary to carry out the proposed plan;
6. Budget request to be commensurate with the proposed plan and well justified;

Additional criteria may be used to review and rank applications for this competition. Any such criteria will be identified in the program guidance included in the application kit. Applicants should pay strict attention to addressing these criteria, in addition to those referenced above. Also, to the extent that regulatory review criteria generally applicable to all Title V programs (at 42 CFR part 51a) are relevant to this specific project, such factors will be taken into account.

Paperwork Reduction Act

OMB approval for any data collection in connection with this cooperative agreement will be sought, as required under the Paperwork Reduction Act of 1995.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372

The MCH Federal Set-Aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

Dated: April 23, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–10429 Filed 4–26–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Maternal and Child Health Federal Set-Aside Program; Special Projects of Regional and National Significance; Oral Health Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $350,000 in fiscal year (FY) 2002 funds is available to fund one competitive grant to establish a new National Maternal and Child Oral Health Resource Center (NMCOHRC). This new center is intended to continue, in part, activities carried out by an earlier oral health resource center funded by the Maternal and Child Health Bureau (MCHB). The purpose of the NMCOHRC is to collect maternal and child oral health information and materials that are not readily available elsewhere, and make them available to the public for easy reference and retrieval in a variety of print and media formats. Eligibility is open to any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b). The award will be made under the program authority of section 501(a)(2) of the Social Security Act, the Maternal and Child Health (MCH) Federal Set-Aside Program (42 U.S.C. 701(a)(2)). Funds for this award were appropriated under Public Law 107–116. The award will be made for a project period of up to five years. Funding beyond the first year is subject to grantee performance and the availability of funds.

DATES: Applicants for this program are requested to notify MCHB of their intent by May 10, 2002. Notification of intent to apply can be made in one of three ways: telephone: 301–443–3449; email: *mnehring@hrsa.gov* or; mail: MCHB/HRSA; Division for Child, Adolescent and Family Health; Oral Health Program; Parklawn Building, Room 18A–39; 5600 Fishers Lane; Rockville, MD 20857. The deadline for receipt of applications is June 14, 2002. Applications will be considered ''on time'' if they are either received at the Grants Application Center on or before the deadline date or postmarked on or before the deadline date. The projected award date is September 1, 2002.

ADDRESSES: To receive a complete application kit, applicants may

telephone the HRSA Grants Application Center at 1–877–477–2123 (1–877–HRSA–123) beginning April 29, 2002, or register on-line at: *http://www.hrsa.gov/,* or by accessing *http://www.hrsa.gov/g__order3.htm* directly. This program uses the standard Form PHS 5161–1 (rev. 7/00) for applications (approved under OMB No. 0920–0428). Applicants must use the appropriate Catalog of Federal Domestic Assistance (CFDA) number 93.110AD when requesting application materials. The CFDA is a Government wide compendium of enumerated Federal programs, projects, services, and activities that provide assistance. All applications should be mailed or delivered to: Grants Management Officer (MCHB), HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879, telephone: 1–877–HRSA–123 (477–2123), e-mail: *hrsagac@hrsa.gov.*

This application guidance and the required form for the Oral Health Program may also be downloaded in either WordPerfect 6.1 or Adobe Acrobat format (.pdf) from the MCHB Homepage at *http://www.mchb.hrsa.gov/.* Please contact Joni Johns at 301–443–2088 or *jjohns@hrsa.gov*, if you need technical assistance in accessing the MCHB Home Page via the Internet.

This announcement will appear on the HRSA Home Page at: *http://www.hrsa.gov/.* **Federal Register** notices are found by following instructions at: *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

FOR FURTHER INFORMATION CONTACT: Mark E. Nehring D.M.D., M.P.H., 301–443–3449, e-mail: mnehring@hrsa.gov (for questions specific to project activities of the program, program objectives, or the Letter of Intent described above); and Mona Thompson, 301/443–3429; e-mail, *mthompson@hrsa.gov* (for grants policy, budgetary, and business questions).

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Oral health means more than just healthy teeth. In addition to dental caries and periodontal disease, oral diseases include oral and pharyngeal cancers, soft tissue lesions, birth defects such as cleft lip and palate, and other disfiguring or painful conditions that require professional treatment. Recent research also suggests that oral diseases may be associated with heart and lung disease, stroke, low birth weight, and prematurity.

Despite considerable progress made over the last 50 years, oral diseases remain common in the U.S. Furthermore, the burden of oral disease is not uniformly distributed in the population. Minorities, lower income individuals, and those who are uninsured are disproportionately more likely to suffer from untreated oral disease. Untreated oral disease can affect economic productivity and compromise the ability to work. Pain and suffering due to untreated oral disease can also lead to problems eating, speaking, and learning.

At a workshop on oral health of mothers and children sponsored by the Maternal and Child Health Bureau (MCHB) in September 1989, participants urged MCHB to play a greater leadership role in addressing the oral health needs of children and their families, and serve as the national leader for the transfer of information regarding children's oral needs and services between State MCH programs, communities, academia and the Nation in general.

In particular, concerns were expressed that resource and information centers focusing on oral health were very limited in scope and number, and none were focused on the oral health of infants, children, adolescents and their families. There were also concerns that information and materials produced by oral health programs were not being collected in a central location for easy reference and retrieval, and were not widely available to help States, communities, MCH programs and professionals serving children to develop, implement, and evaluate programs and services.

MCHB responded by funding an Oral Health Resource Center (OHRC) in 1996 to begin to address these concerns. The objectives of the OHRC were to: serve as a national resource focusing on improving the oral health status of infants, children, adolescents, and their families; collect information on oral health programs and materials produced by oral health programs (materials not readily available elsewhere) for easy reference and retrieval; research and produce oral health educational materials in print and electronic format; and widely disseminate information and materials in print and electronic format.

The new NMCOHRC is intended to continue this work, and to assist States and communities by increasing awareness of oral health disparities that exist within States and our nation as a whole, and to help them develop programs to address disparities and reduce access barriers to oral health services for women and children.

Authorization

Section 501(a)(2) of the Social Security Act, 42 U.S.C. 701(a)(2).

Purpose

The purpose of the National Maternal and Child Oral Health Resource Center is to serve the public through: Identification and collection of information about oral health programs and initiatives; and provision of gathered information and materials to health professionals, policy makers, consumers, and others to assist them in improving oral health services for children, adolescents and their families. To this end, it will be necessary for the center to provide information and educational resource services.

Grantee activities are expected to include: Collecting and disseminating oral health program materials through print and electronic media, providing technical assistance to States and to other organizations, collaborating with other HRSA/MCHB-supported oral health grantees and oral health organizations, facilitating communication among oral health officials and consultants, and raising awareness of oral health services provided by other grantees to States, communities and the public in general.

Eligibility

Under SPRANS project grant regulations at 42 CFR 51a.3, any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450(b)), is eligible to apply for grants and cooperative agreements covered by this announcement. Under the President's initiative, faith-based organizations that are otherwise eligible and believe they can contribute to HRSA's program objectives are urged to consider this initiative.

Funding Level/Project Period

The project will be approved for a project period of up to five years. Up to $350,000 in fiscal year (FY) 2002 funds will be used to fund the first year of this grant. Funding after the initial year is contingent on performance and the availability of funds.

Review Criteria

Applications that are complete and responsive to the guidance will be evaluated by an objective review panel specifically convened for this solicitation and in accordance with HRSA grants management policies and procedures.

Grant applications will be reviewed using the following criteria:

1. Estimated costs to the Government of the project are reasonable considering the level and complexity of activity and the anticipated results;

2. Project personnel or prospective fellows are well qualified by training

and/or experience for the support sought, and the applicant organization has adequate facilities and manpower;

3. In so far as practical, the proposed activities (scientific or other), if well executed, are capable of attaining project objectives;

4. Project objectives are capable of achieving the specific program objectives defined in the program announcement and the proposed results are measurable;

5. The method for evaluating proposed results includes criteria for determining the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program;

6. In so far as practical, the proposed activities, when accomplished, include plans for broad dissemination.

Additional criteria may be used to review and rank applications for this competition. Any such criteria will be identified in the program guidance included in the application kit. Applicants should pay strict attention to addressing these criteria, in addition to those referenced above. Also, to the extent that regulatory review criteria generally applicable to all Title V programs (at 42 CFR 51a) are relevant to this specific project, such factors will be taken into account.

Executive Order 12372

The MCH Federal Set-Aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

Dated: April 19, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–10428 Filed 4–26–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Graduate Student Training Program Applications

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Graduate Partnerships Program/OIR/OD/, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on Thursday, October 4, 2001, page 50659–50660 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Graduate Student Training Programs Application. *Type of Information Collection Request:* New. Need and Use of Information Collection: The information gathered in the Graduate Student Training Programs application will enable the identification and evaluation of graduate students interested in performing their dissertation research in the NIH Intramural Research Program laboratories (NIH–IRP). Modeling university applications for admission into graduate programs, the Graduate Student Training Program application contains several sections that will aid the NIH admission committee's identification and evaluation of each graduate student. Specific areas required to evaluate a candidate include the following: contact information, citizenship status, identification of programs to which the student wishes to apply, students' graduate university information and undergraduate university information, standardized examination scores, references and letters of recommendation, proposed NIH advisor information, University advisor information, research interests, career goals, and proposed research in NIH IRP. Ethnicity and gender are additional optional information used to evaluate the GPP recruiting abilities and compliance with federal regulations. *Frequency of Response:* Once. *Affected Public:* Individuals. *Type of Respondents:* Students pursuing an advanced degree, Ph.D., and would like to perform their dissertation research in the NIH Intramural Research Program laboratories. The annual reporting burden is displayed in the following table:

ESTIMATES OF HOUR BURDEN

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Student Application to Current Graduate Student Programs	250	1	0.50	125
Student Application to Future Graduate Student Programs	500	1	0.50	250
Collection & Submission of Hardcopy Documents	750	1	0.50	375
Recommendations (750 × 3)	2250	1	0.25	563
Totals	3750			1313

Estimate of Capital Costs, Operating Costs, and/or Maintenance Costs are displayed in the following table:

ESTIMATE OF ANNUAL COST TO THE FEDERAL GOVERNMENT

Annualized capital, start-up cost	Amount	Operational/maintenance & purchase components	Amount
Information Collection	$0.00	Trouble-shooting and monitoring fees	$2000.00
Application Design, Development, Testing	12,000.00	Maintenance	1000.00
Total	$12,000.00	Total	$3,000.00

Estimate of Other Total Annual Cost Burden: $15,000.00.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Patty McCarthy, Program Coordinator, Graduate Partnerships Program, National Institutes of Health, 10 Center Drive, Building 10/Room 1C129, Bethesda, Maryland 20892–1153, or call 301–594–9603 or E-mail your request, including your address to: *mccarthy@od.nih.gov.*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: April 18, 2002.

Michael M. Gottesman,

Deputy Director of Intramural Research, National Institutes of Health.

[FR Doc. 02–10415 Filed 4–26–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Centers of Excellence in Chemical Methodologies and Library Development.

Date: June 17–18, 2002.

Time: 7 pm to 7 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Laura K Moen, Phd., Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13H, Bethesda, MD 20892, 301–594–3998, moenl@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10414 Filed 4–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–6 (12).

Date: April 23, 2002.

Time: 10 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10412 Filed 4–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 Special Study Section-X (20).

Date: May 22–23, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday inn, 201 S. Shackleford Road, Little Rock, AR 72211.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1-Special Study Section-W (45).

Date: May 22, 2002.

Time: 10 a.m to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–10413 Filed 4–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4556–N–18]

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of the Establishment of a new system of records.

SUMMARY: Pursuant to the provision of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of Housing and Urban Development developed the Public and Indian Housing (PIH) Information Center (PIC). This system combines several individual PIH business systems into one integrated system. The PIH systems now exist in one environment, enabling users access to a wealth of data without signing onto multiple systems. PIC incorporates the former Integrated Business System (IBS); Multifamily Tenant Characteristics System (MTCS), previously released on October 1, 1999; and Capital Fund Verification System (FOCVS). It also incorporates new functionality such as the Building and Unit Inventory; Section 8 Management Assessment Program (SEMAP); and Risk Assessment.

PIH developed a state of the art system to improve the submission of information to HUD from the Office of Public and Indian Housing program participants. PIC facilitates more timely and accurate exchanges of data between public housing agencies (PHAs) and HUD Offices.

PIC contains building and unit details, PHA program information, financial and budgetary data, and family records with demographic, rent, and income details.

This system of records also supports the administration of programs for families receiving housing assistance from HUD by those entities that administer HUD's rental assistance programs. Entities that administer HUD's rental assistance programs include: PHAs, Indian Tribes, state agencies, and Tribally Designated Housing Entities participating in the Section 8 Program.

SYSTEM SECURITY MEASURES: The integrity and availability of data in PIC are important. Much of the data needs to be protected from unanticipated or unintentional modification. HUD restricts the use of this information to HUD approved officials and PHAs; thus, the data is protected accordingly. As a part of HUD's oversight responsibility, the collected data in PIC is used to calculate the amount of subsidy authorized and disbursed to PHAs to monitor PHAs' overall performance and use of HUD funds.

Vulnerabilities and corresponding security measures include: (1) Multi-user access—access to the PIC system is controlled using PIC's Security module. This module controls a user's access to particular modules, update access, read-only access, and approval access based on the user's role and security access level; (2) unauthorized system access—unauthorized access is reduced by restricting access by job function and by the use of user identifications (User IDs) and passwords. User IDs will also be utilized to identify transactions by users; (3) inaccurate and incomplete data—inaccurate and incomplete data are identified and eliminated with extensive edits, (4) data corruption/destruction—there are limited user IDs that will have update rights to the production server/databases. This will greatly reduce the risk of data destruction or corruption, (5) multi-user processing—PIC utilizes reactive locking (which is an algorithm implemented in database management software so that multiple users cannot update the same data at the same time).

DATA QUALITY: PHAs enter management, building, unit, and family information into PIC. Family information includes the families' names, social security numbers (SSN), and dates of birth. When a PHA submits family data to PIC, the system will verify whether or not the SSN for the family's head of household exists in PIC. If the SSN does exist in PIC, but is actively associated with another PHA, the PHA will receive an error message that states that the family's SSN currently exists in PIC. The error message will also list the PHA that houses the family.

If PHA A submits a SSN to PIC, and the next day PHA B submits the same SSN, PHA B will receive a message that the family's SSN currently exists in PIC.

PHA B will verify the individual's social security number for accuracy. If the SSN is correct, PHA B may call the PHA A to compare families. The PHAs may exchange the family name, SSN, and date of birth of the head of household to determine if the family currently receives benefits from multiple PHAs.

This social security number search feature was established to help HUD maintain data quality and integrity and to support one of its strategic objectives to prevent fraud and abuse. This search feature will (1) help confirm that those families entitled to benefits receive benefits, (2) assist in limiting the duplication of benefits, and (3) help prevent the false application for benefits, thereby ensuring data quality. In addition, PIC will receive income data from state wage-information collection agencies (SWICAs), one or more private vendors and, the Social Security Administration. This will allow PHAs to verify the income of applicants and tenants at the time of occupancy and at re-certification.

DATES: *Effective Date:* This proposal shall become effective without further notice on May 29, 2002 unless comments are received during or before this period which would result in a contrary determination.

Comments Due Date: May 29, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW,

Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, telephone number (202) 708–2374. Regarding records maintained in Washington, DC, contact: Johnson Abraham, Deputy Assistant Secretary for Administration and Budget in the Office of Public and Indian Housing and PIC Project Manager, telephone number (202) 708–0440. [The above are not toll free numbers.] A telecommunications device for hearing and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, notice is given that HUD proposes to establish a new system of records identified as the Public and Indian Housing Information Center (PIC) P113.

Title 5 U.S.C 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record systems. The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs and the House Committee on Government Reform pursuant to paragraph 4c of Appendix l to OMB Circular No. A–130, ''Federal Responsibilities for Maintaining Records About Individuals,'' July 25, 1994 (59 FR 37914).

Accordingly, this notice establishes a new system of records and accompanying routine uses to be submitted and accessed in the management of housing programs of the Office of Public and Indian Housing.

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: April 22, 2002.

Gloria R. Parker,

Chief Information Officer.

HUD/PIH–4

SYSTEM NAME:

Public and Indian Housing Information Center (PIC).

SYSTEM LOCATIONS:

The files will be maintained at the following location: U. S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Lockheed Martin Corporation, located at 4701 Forbes Blvd., Lanham, MD 20706, will monitor access of any encrypted files containing social security and rent information (subject to the provisions of 26 U.S.C. 6103).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Families receiving rental housing assistance via programs administered by the Department of Housing and Urban Development, state agencies, Indian Tribes, Tribally Designated Housing Entities participating in the Section 8 program, PHAs and/or owners and management agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of automated building, unit, and family composition, income, and rent data obtained from PHAs. The system of records contains—identification information such as names and social security numbers for individuals 6 years and older; alien registration information; address and tenant unit numbers; financial data such as income, adjustments to income, tenant family composition characteristics such as family size, sex of family members, information about the family that would qualify them for certain adjustments or for admission to a project limited to a special population (e.g., elderly, handicapped, or disabled); relationships of members of the household to the head of household (e.g., spouse, child); preferences applicable to the family at admission; income status at admission; race and ethnicity of household members; unit characteristics such as number of bedrooms; geographic data obtained by the PHA; data obtained from third parties to verify data supplied by an applicant or tenant to determine eligibility or level of assistance; data obtained from a state wage information collection agency on wages and claim information; and information on the results of the follow-up phase of owner verifications or a computer match of tenant income (i.e., dollar amount of overpaid assistance, amount repaid, prosecution, termination of assistance, and termination of tenancy).

Also included in PIC are records on contractual agreements (e.g., obligations, payments, contract terms), financial information, and personal data (e.g., names, addresses, taxpayer identification numbers/ social security numbers) for PHAs and/or owners and management agents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pursuant to the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 and Section 303(i) of the Social Security Act, HUD and HUD-funded public housing authorities may request wage and claim data from State Wage Information Collection Agencies (SWICAs) responsible for administering state unemployment laws. On October 1, 1994, Section 542(a)(1) of HUD's 1998 Appropriation Act, eliminated a sunset provision to Section 303(i) of the Social Security Act, effectively making permanent the authority requiring state agencies to disclose wage and claim information to HUD and public housing agencies. The Housing and Community Development Act of 1987 authorizes HUD to require applicants for and participants in (as well as members of their households six years of age and older) HUD administered rental housing assistance programs to disclose to HUD their social security numbers as a condition of initial or continuing eligibility for participation in these HUD programs. The Omnibus Budget Reconciliation Act of 1993 (Budget Reconciliation Act) authorizes HUD to request from the Social Security Administration federal tax data as prescribed in section 6103 (l)(7) of title 26 of the United States Code (Internal Revenue Code).

PURPOSES:

The primary purpose of the PIC is to allow PHAs to electronically submit information to HUD that is related to the administration of HUD's Public and Indian Housing programs. The first component of PIC was successfully implemented on December 15, 1999. PIC provides automated interactive support in an IIS/MTS/SQL Server environment for the Office of Public and Indian Housing staff. It collects data for PIH operations, including data submitted via the Internet from HUD's field offices and HUD's business partners, and accurately tracks activities and processes. PIC also helps to increase sharing of information throughout the Office of Public and Indian Housing, which improves staff awareness of activities related to the administration of HUD-subsidized housing programs. PIC is a flexible, scaleable, Internet-based integrated system, which enables PHA users and HUD personnel to access a common database of PHA information via their web browser. PIC will aid HUD and entities that administer HUD's assisted housing programs in: (a) Increasing the effective distribution of rental assistance to individuals that meet the requirements of Federal rental assistance programs, (b) detecting abuses in assisted housing programs, (c) taking administrative or legal actions to resolve past abuses of assisted housing

programs, (d) deterring abuses by verifying the income of applicants and tenants at the time of occupancy and at re-certification via the use of electronic income data received from state wage-information collection agencies (SWICAs), one or more private vendors and, the Social Security Administration, (e) evaluating the effectiveness of income discrepancy resolution actions taken by PHAs, owners and management agents for HUD's rental assistance programs, (f) evaluating program effectiveness, (g) improving the reporting rate, (h) forecasting budgets, (i) controlling funds, and (j) updating building and unit data. PIC is a management information system that contains tools to help: (1) distribute capital and operating funds, (2) monitor the Event Tracking System (ETS) by HUD staff, (3) produce management reports, and (4) conduct risk assessments.

The Public and Indian Housing Information Center (PIC) serves as a repository for automated information used when comparing family income data reported—by recipients of Federal rental assistance—to income data received from external sources (*e.g.,* SWICAs, SSA, etc.). Records in PIC are subject to use in authorized and approved computer matching programs regulated under the Privacy Act of 1974, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to the uses cited in the section of this document titled ''Purposes'', other routine uses may include:

1. To federal, state, and local agencies (*e.g.,* state agencies administering the state's unemployment compensation laws, state welfare and food stamp agencies, U.S Office of Personnel Management, U.S. Postal Service, U.S. Department of Defense, and U.S. Social Security Administration)—to verify the accuracy and completeness of the data provided, to verify eligibility or continued eligibility in HUD's rental assistance programs, and to aid in the identification of tenant errors, fraud, and abuse in assisted housing programs through HUD's tenant income computer matching program;

2. To individuals under contract to HUD or under contract to another agency with funds provided by HUD—for the preparation of studies and statistical reports directly related to the management of HUD's rental assistance programs, to support quality control for tenant eligibility efforts requiring a random sampling of tenant files to determine the extent of administrative errors in making rent calculations, eligibility determinations, etc., and for processing certifications/re-certifications;

3. To Public Housing Agencies (PHAs)—to verify the accuracy and completeness of tenant data used in determining eligibility and continued eligibility and the amount of housing assistance received;

4. To private owners of assisted housing—to verify the accuracy and completeness of applicant and tenant data used in determining eligibility and continued eligibility and the amount of housing assistance received;

5. To PHAs, owners and management agents, and contract administrators—to identify and resolve discrepancies in tenant data;

6. To the Internal Revenue Service (IRS)—to report income using IRS Form 1099;

7. To the Social Security Administration and Immigration and Naturalization Service—to verify alien status and continued eligibility in HUD's rental assistance programs; and

8.To researchers affiliated with academic institutions, with not-for-profit organizations, or with federal, state or local governments, or to policy researchers—without individual identifiers—name, address, social security number—for the performance of research and statistical activities on housing and community development issues.

POLICIES FOR STORING, RETRIEVING, AND DISPOSING OF SYSTEM RECORDS

STORAGE:

Records are stored manually in family case files and electronically in office automation equipment. Records are stored on HUD computer servers for field office and public housing agencies' access via the Internet to: (1) Obtain social security and supplemental security income data that are not subject to provisions of 26 U.S.C. 6103; and (2) update actions taken in resolving income discrepancies. Software in PIC precludes the transfer of any data subject to 26 U.S.C. 6103 to unencrypted media.

RETRIEVABILITY:

Records may be retrieved by manual or computer search of indices by the name or social security number of an existing HUD program participant.

SAFEGUARDS:

Records are maintained at the U.S. Department of Housing and Urban Development in Washington, DC with limited access to those persons whose official duties require the use of such records. Computer files and printed listings are maintained in locked cabinets. Computer terminals are secured in controlled areas, which are locked when unoccupied. Access to automated records is limited to authorized personnel who must use a password system to gain access. HUD will safeguard the SSN, income, and rent information obtained pursuant to 26 U.S.C. 6103(l)(7)(A) and (B) in accordance with 26 U.S.C. 6103(p)(4) and the IRS's ''Tax Information Security Guidelines for Federal, State and Local Agencies,'' Publication 1075 (REV 6/2000).

RETENTION AND DISPOSAL:

Computerized family records are maintained in a password-protected environment. If information is needed for evidentiary purposes, documentation will be referred to the HUD Office of Inspector General (OIG) in Washington, DC or other appropriate Federal, state or local agencies charged with the responsibility of investigating or prosecuting violators of federal law. Documents referred to HUD's OIG will become part of OIG's Investigative Files. Records will be retained and disposed of in accordance with the General Records Schedule included in HUD Handbook 2228.2, appendix 14, item 25.

SYSTEM MANAGER AND ADDRESS:

Johnson Abraham, Deputy Assistant Secretary for Administration and Budget/CFO and Project Manager of PIH's Information Center (PIC), U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them, or those seeking access to such records, should address inquiries to the Project Manager of PIH's Information Center (PIC), U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Written requests must include the full name, Social Security Number, date of birth, current address, and telephone number of the individual making the request.

CONTESTING RECORD PROCEDURES:

Procedures for the amendment or correction of records, and for applicants wanting to appeal initial agency determinations based on data in PIC, appear in 24 CFR part 16.

RECORD SOURCE CATEGORIES:

The Office of Public and Indian Housing may receive data from HUD field office staff, federal government agencies, state and local agencies, private data sources, owners and management agents, and public housing agencies. Public Housing Agencies (PHAs) routinely collect personal and income data from participants in and applicants for HUD's public and assisted housing programs. The data collected by PHAs is entered into the PIC system on-line via the system itself, via PHA-owned software, or via HUD's Family Reporting Software (FRS).

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–10504 Filed 4–26–02; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Hanford Reach National Monument Federal Advisory Committee; Meeting Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; FACA meeting.

SUMMARY: The Hanford Reach National Monument Federal Advisory Committee is announcing two meetings in May. The first meeting will take place Thursday, May 2, 2002, at the Consolidated Information Center, Washington State University Tri-Cities Campus in Richland, WA, from 9 a.m. to 4 p.m. The second meeting will take place Wednesday, May 29, 2002 at the City of West Richland Council Chambers, from 12 p.m. to 4 p.m.

DATES: For each meeting, verbal comments will be considered during the course of the meeting and written comments will be accepted that are submitted by the close of the meeting. All comments delivered to the below address must be received by May 29, 2002.

ADDRESSES: Any member of the public wishing to submit written comments should send those to Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument (HRNM) Federal Advisory Committee, Hanford Reach National Monument/ Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Blvd., Richland, WA 99352; fax (509) 375–0196. Copies of the draft meeting agenda can be obtained from the Designated Federal Official.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting should contact Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument (HRNM) FAC; phone (509) 371–1801, fax (509) 375–0196.

SUPPLEMENTARY INFORMATION: During the next two meetings, the Hanford Reach National Monument Federal Advisory Committee will preview subcommittee reports, and consider recommendations to the U.S. Fish and Wildlife Service on the public scoping process.

Dated: March 12, 2002.

Greg Hughes,

Project Leader, Hanford Reach National Monument.

[FR Doc. 02–10622 Filed 4–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EM, WYW127221]

Federal Coal Lease Modification, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability, notice of public hearing and request for public comment on the environmental assessment (EA) for the Modification of Federal Coal Lease WYW127221 at the North Rochelle Mine operated by Triton Coal Company LLC, in Campbell County, WY.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and implementing regulations and other applicable statutes, the Bureau of Land Management (BLM) announces the availability of the Environmental Assessment (EA) for the Modification of Federal Coal Lease WYW127221 at the North Rochelle Mine in the Wyoming Powder River Basin, and announces the scheduled date and place for a public hearing pursuant to 43 CFR part 3432, 3425.3 and 3425.4. The EA addresses the impacts of modifying this Federal coal lease and mining the modification area as a part of the North Rochelle Mine operated by Triton Coal Company LLC, in Campbell County, WY. The purpose of the hearing is to solicit public comments on the EA, the fair market value (FMV), the maximum economic recovery (MER), and the proposed noncompetitive offer of the coal included in the proposed lease modification. This lease modification is being considered for offer as a result of a request received from Triton Coal Company LLC, on February 9, 2001. The tract as requested includes about 155.899 acres containing approximately 13 million tons of Federal coal reserves.

DATES: A public hearing will be held at 7 p.m. MDT, on May 30, 2002 at the BLM, Casper Field Office, 2987 Prospector Drive, Casper, WY. Written comments will be accepted for 30 days from the date this notice is published.

ADDRESSES: Please address questions, comments or requests for copies of the EA to the BLM, Casper Field Office, Attn: Mike Karbs, 2987 Prospector Drive, Casper, WY 82604; or you may e-mail them to the attention of Mike Karbs at *casper_wymail@blm.gov;* or fax them to (307) 261–7587.

FOR FURTHER INFORMATION CONTACT: Mike Karbs or Nancy Doelger at the above address, or phone: 307–261–7600.

SUPPLEMENTARY INFORMATION: The BLM, Casper Field Office has received a request to modify an existing Federal coal lease at the North Rochelle Mine. This mine is operated by Triton Coal Company LLC, and is located in Campbell County, WY, approximately 12 miles southeast of Wright. On February 9, 2001, Triton Coal Company, LLC filed an application with the BLM to modify Federal lease WYW127221 by adding the following lands:

T. 42 N., R. 70 W., 6th PM, Wyoming
Section 4: Lot 17 (N½, N½S½); Lot 18 (N½, N½S½),
Section 5: Lot 17 (N½); Lot 18 (N½,); Lot 19 (N½, N½S½); Lot 20 (N½, N½S½).

This tract is adjacent to Triton Coal Company's North Rochelle Mine and includes 155.899 acres more or less with an estimated 13 million tons of coal. This application was filed as a lease modification under the provisions of 43 CFR part 3432.

The proposed modification area lies between Federal coal lease WYW127221 and the Reno county road right-of-way. Based on the latest mine plan for the North Rochelle mine, coal removal on the lease modification area will occur in conjunction with the existing lease beginning in 2003 and completed by 2010. The coal removal is consistent with the currently approved resource recovery and protection plan for the North Rochelle mine and the North Rochelle mining permit amendment application pending before the Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/ LQD).

If the lease is modified, the mining and reclamation permit would be modified to include coal recovery from the lease modification area. The modification would allow for the maximum coal that could be recovered

using the surface methods planned for the mine and would allow for lateral support and protection of the Reno county road right-of-way. The Federal coal in this modification would be recovered in conjunction with the existing lease. Recovery of these reserves will add to Federal and State royalty and tax revenues and will contribute to the economy in this area.

BLM believes that there is no current competitive interest in the lands proposed for lease modification; although as noted above, this area could be recovered as part of a later competitive coal lease tract, but that may or may not occur. This lease modification would not reduce the competitive value of a later competitive coal lease tract. Under the lease modification process, the modified lands would be added to the existing lease without competitive bidding. Before offering the lease modification the BLM will prepare an appraisal of the FMV of the lease. The U.S. would receive FMV of the lease for the added lands.

The proposed lease modification is within the mine permit area of the North Rochelle Mine. No new facilities or employees would be needed to mine the coal. Haul distances would not be increased. If production at the North Rochelle Mine continues at the current rate, the 13 million tons of coal included in the proposed lease modification would represent about six to eight months of production. The lands were studied under the National Environmental Policy Act of 1969 (NEPA) as part of the Draft and Final Environmental Impact Statement (EIS) for the North Rochelle Coal Lease Application (BLM 1997), as well as several earlier NEPA analyses. If this tract is modified into the current lease, the new lands must be incorporated into the existing mining plans for the North Rochelle Mine. The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency in the preparation of the environmental document because it is the Federal agency that is responsible for any required actions necessary to incorporate these lands into the current mining plan.

BLM conducted scoping during late May and June 2001, soliciting specific concerns that should be considered in processing this modified lease application, with scoping comments accepted through June 30, 2001. A NEPA analysis addressing issues identified or information received during this scoping period for the proposed lease modification was completed and distributed to the public on July 31, 2001. There was a 30-day comment period on the NEPA analysis, with comments accepted until August 31, 2001. A public hearing was held on August 14, 2001, at the Clarion Western Plaza Hotel in Gillette, WY, to solicit public comment on the NEPA analysis, the proposed modification, and the fair market value and maximum economic recovery of coal in the proposed tract. The EA addresses all the issues and information received as a result of the scoping and the review of the NEPA analysis as well as a notice of appeal on this modification filed by Independent Production Company on November 2001. In addition to preparing the EA, BLM will also develop possible stipulations regarding mining operations, determine the FMV of the tract, and evaluate MER of the coal in the proposed tract while processing this lease modification.

Comments on the EA, the FMV, the MER, and the proposed noncompetitive offer of the coal included in the proposed lease modification, as well as comments already received, including names and street addresses of respondents, will be available for public review at the address below during regular business hours (7:45 a.m.–4:30 p.m.), Monday through Friday, except holidays. 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 or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: March 28, 2002.

Phillip C. Perlewitz,

Chief, Branch of Solid Minerals.

[FR Doc. 02–10432 Filed 4–26–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–912–6320–AA; GP2–0163]

Resource Advisory Committees; Call for Nominations to Alternate Positions

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of a call for nominations for alternate positions to the Bureau of Land Management (BLM) Resource Advisory Committees (Committees) provided for in Section 205 of the Secure Rural Schools and Community Self-Determination Act of 2000, Public Law 106–393 (the Act).

SUMMARY: This purpose of this notice is to solicit nominations for vacant alternate positions to the BLM's Coos Bay, Eugene, Salem and Roseburg Resource Advisory Committees. In accordance with the Committee Charters, the role of an alternate is to fill vacancies that occur when a primary member leaves the Committee. Public nominations will be considered for 30 days after the publication date of this notice.

The BLM Resource Advisory Committee vacancies are as follows:

Coos Bay Resource Advisory Committee

Category One—2 alternates
Category Three—1 alternate

Eugene Resource Advisory Committee

Category One—1 alternate

Salem Resource Advisory Committee

Category One—2 alternates
Category Two—2 alternates
Category Three—2 alternates

Roseburg Resource Advisory Committee

Category Three—1 alternate

DATE: Nomination applications for alternate positions to the BLM Resource Advisory Committees can be obtained from the Coos Bay, Eugene, Salem and Roseburg District Office, or on the web at *www.or.blm.gov/planning/advisory.* All applications must be received by the appropriate BLM District office listed below no later than 30 days after publication of this notice. All nominations must include letters of reference from represented interests or organizations and a completed application that includes background information, as well as any other information that speaks to the nominee's qualifications.

BLM Resource Advisory Committee Contacts

Coos Bay Resource Advisory Committee, Sue Richardson, District Manager, 1300 Airport Lane, North Bend, Oregon 97459, (541) 756–0100

Eugene Resource Advisory Committee, Wayne Elliot, Resource Management Advisor, 2890 Chad Drive, Eugene, Oregon 97408–7336, (541) 683–6600

Roseburg District Resource Advisory Committee, Cary Osterhaus, District Manager, 777 NW Garden Valley Blvd., Roseburg, Oregon 97470, (541) 440–4913

Salem District Resource Advisory Committee, Jose Linares, Associate District Manager, 1717 Fabry Road SE, Salem, Oregon 97306, (503) 375–5646

FOR FURTHER INFORMATION CONTACT: Maya Fuller, Oregon/Washington Bureau of Land Management, Oregon State Office, PO Box 2965, Portland, Oregon 97208, (503) 808–6437.

SUPPLEMENTARY INFORMATION: The Secure Rural Schools and Community Self-Determination Act of 2000 establishes a five-year payment schedule to local counties in lieu of funds formerly derived from the harvest of timber on federal lands. Pursuant to the Act, BLM established five Committees for western Oregon BLM districts that contain O&C grant lands and Coos Bay Wagon Road grant lands. Committees' consist of 15 local citizens, plus 6 alternates, representing a wide array of interests.

The Act creates a new mechanism for local community collaboration with federal land management activities in the selection of projects to be conducted on federal lands or that will benefit resources on federal lands using funds under Title II of the Act. Committee members review proposed projects and transmit their recommendations on those projects to the agency.

Committee membership must be balanced in terms of the categories of interest represented. Members serve without monetary compensation, but will be reimbursed for travel and per diem when on Committee business, as authorized by 5 U.S.C. 5703. Prospective members and alternates are advised that serving on a Resource Advisory Committee calls for a substantial commitment of time and energy.

Any individual or organization may nominate one or more persons to serve on the Committees. Individuals may also nominate themselves or others. Nominees must reside within one of the counties that are (in whole or part) within the BLM District boundaries of the Committee(s) on which membership is sought. A person may apply for and serve on more than one Committee. Nominees will be evaluated based on their education, training, and experience relating to land use issues and knowledge of the geographical area of the Committee. Nominees must also demonstrate a commitment to collaborative resource decision-making.

You may make nominations for the following categories of interest:

Category One—representatives of organized labor; developed outdoor recreation; off-highway vehicle use; energy and/or mining development; timber industry; or holders of federal grazing permits.

Category Two—representatives of nationally, regionally or locally recognized environmental organizations; dispersed recreation, archaeological and historic interests; or wild horse and burro groups.

Category Three—State, county or local elected officials; representatives of Native American Tribes; school officials or teachers, or the public-at-large.

The BLM Resource Advisory Committees are based on western Oregon BLM District boundaries. Specifically, the BLM Committees are as follows:

Salem District Resource Advisory Committee advises officials on projects associated with federal lands within the Salem District boundary which includes Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties.

Eugene District Resource Advisory Committee advises federal officials on projects associated with federal lands within the Eugene District boundary. The area covers Benton, Douglas, Lane, and Linn Counties.

Roseburg District Resource Advisory Committee advises federal officials on projects associated with federal lands within the Roseburg District boundary which includes Douglas, Lane, and Jackson Counties.

Medford District Resource Advisory Committee advises federal officials on projects associated with federal lands within the Medford District and Klamath Falls Resource Area in the Lakeview District. The area covers Coos, Curry, Douglas, Jackson, and Josephine Counties, and small portions of west Klamath County.

Coos Bay District Resource Advisory Committee advises federal officials on projects associated with federal lands within the Coos Bay District which includes Coos, Curry, Douglas, and Lane Counties.

Dated: March 26, 2002.

Ron Wenker,

Medford District Manager.

[FR Doc. 02–10386 Filed 4–26–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1610–DO–033F]

Notice of Intent To Prepare an Amendment to the Carson City Field Office Consolidated Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to conduct public scoping meetings and solicit scoping comments in the preparation of an Environmental Impact Statement and an amendment to the Carson City Field Office Consolidated Resource Management Plan.

SUMMARY: The Bureau of Land Management (BLM), Carson City Field Office, the Washoe Tribe of Nevada and California, the Yerington Paiute Tribe, Douglas County, Lyon County, Carson City, other State and Federal agencies, and interested citizens and organizations will jointly prepare an amendment to the Carson City Field Office Consolidated Resource Management Plan. The planning area is composed of approximately 400,000 acres of BLM-managed public land, Public Domain Individual Indian Allotments, and intermingled private lands in the Pine Nut Mountains, east of Carson City, Nevada. The Environmental Impact Statement, will analyze the impacts of the proposed plan amendment and alternatives.

Issues identified during preliminary internal BLM scoping include:

(1) Urban Interface Management, (2) Off Highway Vehicle Use and Management, (3) Recreation/Visual and Scenic Resources, (4) Lands and Land Tenure Issues, (5) Wildlife and Threatened and Endangered Species Management, (6) Livestock Management, (7) Wild Horse Population Management, (8) Fire Management, (9) Cultural Resource Management, (10) Native American Issues, (11) Minerals, (12) Air Quality, (13) Water Resources, (14) Soils and Noxious Weeds, (15) Special Areas, (16) Hazardous Wastes/Materials. State and Federal Agency resource specialists, Native Americans, and individuals with expertise in the disciplines and issues listed above will participate in preparation of this plan amendment.

DATES: Public participation opportunities will be provided by the collaborative nature of this planning process in addition to those prescribed by BLM planning and NEPA regulations. BLM has engaged a diverse

group of local government representatives, State agency personnel, other Federal agencies, members of the Washoe Tribe and the Yerington Paiute Tribe, organizations, and interested citizens to jointly prepare the Pine Nut Mountain Plan Amendment. Public scoping meetings will be held in conjunction with the Douglas and Lyon County regularly scheduled County Commissioner meetings and the Carson City Board of Supervisors meetings. Public participation activities, including scoping meetings to identify issues and planning criteria, will be announced at least 15 days before the scheduled meeting in the local news media and notices sent to persons and parties on the mailing list. These meetings will be held in order to allow the public an opportunity to identify issues and concerns to be addressed in the plan amendment and environmental analysis. Scoping comments will be accepted until March 31, 2002, or 60 days from the publication of this notice, whichever is later. Scoping comments may be submitted during the public meetings or sent to: Field Office Manager, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, NV 89701.

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 additional information, write to the Field Manager of the Carson City Field Office at the address listed in the **DATES** section of this notice, call or email Tom Crawford (BLM Team Leader) at (775) 885–6169, or Mike McQueen (BLM NEPA Coordinator) at (775) 885–6120.

SUPPLEMENTARY INFORMATION: The proposed plan amendment schedule is as follows:

Begin Public Scoping and Planning Criteria Review—January, 2002
Release Draft Plan Amendment/EIS for 90-day Public Review—April, 2003
Release Proposed Plan Amendment and Final EIS for 60-day Governor's Consistency
Review and concurrent 30-day public protest period—April, 2004
Issue Plan Amendment and Record of Decision—June, 2004

The Carson City Field Office Consolidated Resource Management Plan and the Pre-Plan Analysis and Project Management Plan for the Pine Nut mountains Plan Amendment are available at the Carson City Field Office.

Preliminary Planning Criteria

Preliminary planning criteria have been developed to ensure that the plan amendment is tailored to the issues identified and ensure that unnecessary data collection and analysis would be avoided. These criteria may change in response to public comment and coordination with State and local governments or other Federal agencies. The criteria developed for the Pine Nut Mountains Plan Amendment are described below.

1. Any lands located within the Pine Nut Mountains Planning Area administrative boundary, which are acquired by the BLM, will be managed in a manner consistent with the plan subject to any constraints associated with the acquisition.
2. The plan will recognize the State's responsibility to manage wildlife.
3. The plan will address transportation and access.
4. The planning process will involve Native American tribal governments and will provide strategies for the consideration of recognized traditional uses.
5. Decisions in the plan will strive to be consistent with the existing plans and policies of adjacent local, State, Tribal and Federal agencies, to the extent consistent with Federal law.
6. Plan will support BLM's noxious weed policy as outlined in the Partners Against Weeds document (January 1996) and the CCFO's Weed Prevention Schedule (1997).
7. GIS and metadata information will meet FGDC EO 12906 (June 8, 1994) standards.

Dated: December 11, 2001.

John O. Singlaub,

Field Office Manager.

[FR Doc. 02–10431 Filed 4–26–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL]

Powder River Regional Coal Team Activities: Notice of Public Meeting in Casper, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Powder River Regional Coal Team (RCT) has scheduled a public meeting for May 30, 2002, to review current and proposed activities in the Powder River Coal Region and to review pending coal lease applications (LBA).

DATES: The RCT meeting will begin at 9 a.m. MDT on May 30, 2002. The meeting is open to the public.

ADDRESSES: The meeting will be held at the Oil and Gas Conservation Commission Building, 777 West First Street, Casper, Wyoming 82602.

FOR FURTHER INFORMATION CONTACT: Bob Janssen, Regional Coal Coordinator, BLM Wyoming State Office, Division of Minerals and Lands, 5353 Yellowstone Road, Cheyenne, Wyoming 82009: telephone 307–775–6206.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to discuss pending coal lease by applications (LBA's) in the Powder River Basin. Specific applications for the RCT to consider include:

1. *Mt. Logan LBA.* This new LBA, filed by Cordero Mining Co., is for 7,247.01 acres with approximately 614.4 million tons of Federal coal. The RCT needs to consider the processing schedule for the Mt. Logan LBA.
2. *West Extension-Eagle Butte LBA.* This new LBA, filed by RAG Wyoming Land Co., is adjacent to the Eagle Butte Mine. Approximately 1656.62 acres and 200 million tons of Federal coal are involved. The RCT needs to consider the processing schedule for the West Extension-Eagle Butte LBA.
3. *Big Thunder LBA.* This new LBA, filed by Jacob's Ranch Coal Co. is adjacent to the Black Thunder and Jacob's Ranch mines. Approximately 5634.00 acres and 715.0 million tons of Federal coal are involved. This application overlaps the Little Thunder LBA which is presently being processed. The RCT needs to consider the processing schedule for the Big Thunder LBA and also the overlap with the Little Thunder LBA.
4. Any other LBAs filed before the May 30, 2002, meeting. The RCT may generate recommendation(s) for any or all of these topics.

The meeting will serve as a forum for public discussion on Federal coal management issues of concern in the Powder River Basin region. Any party interested in providing comments or data related to the above pending applications may either do so in writing to the State Director (925), BLM Wyoming State Office, P.O. Box 1828, Cheyenne, WY 82003, no later than May 15, 2002, or by addressing the RCT with his/her concerns at the meeting on May 30, 2002.

The draft agenda for the meeting follows:

1. Introduction of RCT Members and guests.
2. Approval of the Minutes of the October 25, 2000 Regional Coal Team meeting held in Cheyenne, Wyoming.
3. Coal activity since last RCT meeting.
4. Industry Presentations:
—Cordero Mining Co., Mt. Logan LBA
—RAG Wyoming Land Company, West Extension-Eagle Butte LBA
—Jacobs Ranch Coal Co., Big Thunder LBA
5. Other pending coal actions and other discussion items that may arise
6. RCT Recommendations
—Review and recommendation(s) on pending Lease Application(s).
7. Discussion of the next meeting.
8. Adjourn.

Dated: March 4, 2002.

Alan R. Pierson,

State Director, Wyoming BLM.

[FR Doc. 02–10472 Filed 4–26–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

National Petroleum Reserve—Alaska Oil and Gas Lease Sale 2002

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of National Petroleum Reserve—Alaska Oil and Gas Lease Sale 2002.

National Petroleum Reserve—Alaska (NPR–A); Notice of Sale and Notice of Availability of the Detailed Statement of Sale for Oil and Gas Lease Sale 2002 in the NPR–A.

The Bureau of Land Management, Alaska State Office will be holding an oil and gas lease sale bid opening for the Northeast Study Area of the NPR–A at 9:00 a.m. on Monday, June 3, 2002, at the Wilda Marston Theatre in the Z. J. Loussac Public Library, 3600 Denali Street, Anchorage, Alaska. With the exception of one new tract, Tract 2002–H–157, all tracts were previously offered in Sale 991 on May 5, 1999, but received no bids.

All bids must submitted by sealed bid in accordance with the provisions identified in the Detailed Statement of Sale and received at the Bureau of Land Management, Alaska State Office, 222 W. 7th, #13, Anchorage, Alaska 99513–7599 no later than 3:45 p.m., Friday, May 31, 2002.

The Detailed Statement of Sale for Sale 2002 may be obtained by written request to the Public Information Center, Bureau of Land Management, Alaska State Office, 222 W. 7th, #13, Anchorage, Alaska 99513–7599 or by telephone at (907) 271–5960. It will include, among other things, a description of the areas to be offered for lease, the lease terms, conditions and special stipulations and how and where to submit bids. It will be available to the public immediately after publication of this Notice.

Dated: April 5, 2002.

Gene R. Terland,

Acting State Director, Alaska State Office, Bureau of Land Management.

[FR Doc. 02–10388 Filed 4–26–02; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–991 (Preliminary)]

Silicon Metal From Russia

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Russia of silicon metal, provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act.

Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On March 7, 2002, a petition was filed with the Commission and Commerce by Globe Metallurgical Inc. (Globe), Cleveland, OH; SIMCALA, Inc., Mt. Meigs, AL; the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (I.U.E.–C.W.A, AFL–CIO, C.L.C., Local 693), Selma, AL; the Paper, Allied-Industrial Chemical and Energy Workers International Union (Local 5–89), Boomer, WV; and the United Steel Workers of America (AFL–CIO, Local 9436), Niagara Falls, NY, alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports of silicon metal from Russia that are alleged to be sold in the United States at less than fair value (LTFV). Accordingly, effective March 7, 2002, the Commission instituted antidumping duty investigation No. 731–TA–991 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 15, 2002 (67 FR 11709). The conference was held in Washington, DC, on March 26, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 22, 2002. The views of the Commission are contained in USITC Publication 3502 (April 2002), entitled Silicon Metal From Russia: Investigation No. 731–TA–991 (Preliminary).

Issued: April 24, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–10492 Filed 4–26–02; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Vice Chairman Deanna Tanner Okun not participating.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1006–1009 (Preliminary)]

Urea Ammonium Nitrate Solution From Belarus, Lithuania, Russia, and Ukraine

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–1006–1009 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belarus, Lithuania, Russia, and Ukraine of urea ammonium nitrate solution, provided for in subheading 3102.80.00 of the Harmonized Tariff Schedule of the United States, that is alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by June 3, 2002. The Commission's views are due at Commerce within five business days thereafter, or by June 10, 2002. For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedures, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: April 19, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on April 19, 2002, by the Nitrogen Solution Fair Trade Committee, an ad hoc coalition of U.S. producers of urea ammonium nitrate solution, which consists of the following companies: CF Industries, Inc. of Long Grove, IL; Mississippi Chemical Corp. of Yazoo City, MS; and Terra Industries, Inc. of Sioux City, IA.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register.** Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on May 10, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Christopher J. Cassise (202–708–5408) not later than May 8, 2002, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 15, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means. In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

Issued: April 24, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–10481 Filed 4–26–02; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Office of Community Policing Services; Agency Information Collection Activities: Proposed collection; comments requested

ACTION: 30-Day notice of information collection under review: New collection, mental health and community safety initiative application kit.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 25, page 5612 on February 6, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 29, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Mental Health and Community Safety Initiative Grant Application Kit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federally Recognized Tribal Governments. Other: None. Abstract: The information collected will be used by the COPS Office to determine whether Federally Recognized Tribal Governments are eligible for three-year grants specifically targeted to meet the most serious needs of law enforcement in Indian communities. The grants are meant to enhance law enforcement infrastructures and community policing efforts in these communities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 15 responses. The estimated amount of time required for the average respondent to respond is 4.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden is 67.5 hours annually.

IF ADDITIONAL INFORMATION IS REQUIRED CONTACT: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: April 23, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–10381 Filed 4–20–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: New collection, mental health and community safety initiative hiring progress report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 25, page 5613 on February 6, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 29, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Mental Health and Community Safety Initiative Hiring Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federally Recognized Tribal governments. Other: None. Abstract: The information collected will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 10 responses, one for each respondent. The estimated amount of time required for the average respondent is 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated total of 15 annual burden hours associated with this collection.

IF ADDITIONAL INFORMATION IS REQUIRED CONTACT: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: April 23, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–10382 Filed 4–26–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 264–2002]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to modify and publish as a separate system of records, Subsystem L of the Immigration and Naturalization Service Index System, JUSTICE/INS–001, which was published on October 5, 1993 (58 FR 51347). Subsystem L was previously entitled ''Naturalization and Citizenship Indexes.'' As a new and separate system of records, it is now retitled ''The Redesigned Naturalization Application Casework System (RNACS), JUSTICE/INS–031.''

The following captions of the notice reflect changes: (1) System Name, (2) Categories of Individuals Covered by the System, (3) Categories of Records in the System, (4) Purpose, (5) Routine Uses, (6) Storage, and (7) Retention and Disposal. RNACS does not track Freedom of Information Act and Privacy Act (FOIA/PA) requests/responses. Therefore, references to tracking this information has been deleted in the Categories of Individuals, Categories of Records and Purpose sections. Applicable routine uses from JUSTICE/INS–001 have remained. INS is adding three new routine use disclosures. Routine use H permits the disclosure of information to an obligor who has posted an immigration bond. Information will be released that will aid the obligor in locating an individual who has failed to appear at an immigration proceeding and also allows the obligor to review the propriety of an INS notice of breach of bond and/or the related appearance demand. Routine use I will allow contractors working for INS to have access to the information in this system of records. Routine use J allows disclosure to former employees when the Department of Justice requires information and/or consultation assistance from the former employee that is necessary for personnel-related or other official purposes regarding a matter within that person's former area of responsibility. Information is no longer stored on disks and tape and the Storage portion reflects this change. The retention and disposal section is being edited to reflect changes in the automated system. Finally, the system is being modified to remove its exempt status.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on proposed new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by May 29, 2002. The public, OMB, and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on this system.

Dated: April 16, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/INS–031

SYSTEM NAME:

Redesigned Naturalization Application Casework System (RNACS).

SYSTEM LOCATION:

Immigration and Naturalization Service (INS) Headquarters, Regional Service Centers, District Offices and sub-offices as detailed in Justice/INS–999, last published in the **Federal Register** on April 13, 1999 (64 FR 18052).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed applications for naturalization, citizenship, or to replace naturalization certificates under the Immigration and Nationality Act, as amended, and/or who have submitted fee payments with such applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information that identifies individuals named above, e.g., name and address, date of birth, and alien registration number. Records in the system may also include information such as date documents were filed or received in INS, status, and location of record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103; 8 U.S.C. 1363; and 31 U.S.C. 3512.

PURPOSE(S):

This system enables INS to determine the status of pending applications for naturalization; to account for and control the receipt and disposition of any fees collected; to schedule naturalization interviews; to schedule naturalization ceremonies; to print naturalization certificates; and to print information to be sent to applicants and their attorneys on information related to their applications.

ROUTINE USES OF RECORDS MAINTENED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To any federal agency, where appropriate, to enable such agency to make determinations regarding the payment of federal benefits to the record subject in accordance with that agency's statutory responsibilities.

B. In an appropriate proceeding before a court, grand jury, or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding.

C. To an actual or potential party or to his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.

D. Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, to any civil or criminal law enforcement authority or other appropriate agency, whether federal, state, local, foreign, or tribal,

charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing a statute, rule, regulation, or order.

E. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

F. To a Member of Congress, or staff acting upon the Member's behalf, when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

G. To the General Services Administration and National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

H. To an obligor who has posted a bond with the INS for the subject. INS may provide only such information, as either (1) may aid the obligor in locating the subject to insure his or her presence when required by INS, or (2) assist the obligor in evaluating the propriety of the following actions by INS: breach of bond —i.e., notice to the obligor that the subject of the bond has failed to appear which would render the full amount of the bond due and payable.

I. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

J. Pursuant to subsection (b)(3) of the Privacy Act, the Department may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Information is stored on an IBM mainframe computer at the Justice Data Center in Dallas, Texas.

RETRIEVABILITY:

Records may be retrieved by the alien registration number of the individuals covered by the system.

SAFEGUARDS:

Most INS offices are located in buildings under security guard, and access to premises is by official identification. Offices are locked during non-duty hours. Access to this system is obtained through remote terminals that require the use of restricted passwords and user identification.

RETENTION AND DISPOSAL:

The following INS proposal for retention and disposal is pending approval by NARA. Applications and supporting documents are placed in the Alien File (See JUSTICE/INS–001A). Electronic copies are stored on an IBM mainframe computer at the Justice Data Center in Dallas, Texas for ten years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Immigration Services Division, Immigration and Naturalization Service, 801 I Street NW, Washington, DC 20536.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the Immigration Services Division, Attention: Naturalization Program manager.

RECORD ACCESS PROCEDURE:

Make all requests for access in writing to the FOIA/PA Officer at any INS office. Such requests may be submitted either by mail or in person. If a request for access is made by mail, the envelope and letter shall be clearly marked ''Privacy Access Request.'' The requester shall include a description of the general subject matter and if known, the related file number. To identify a record, the requester should provide his or her full name, date and place of birth, verification of identity in accordance with 8 CFR 103.21(b), or a statement of penalty of perjury, and any other identifying information (i.e., alien registration number and receipt number to assist in locating and/or verifying the identity of the record) that may be of assistance in locating the record. The requester shall also provide a return address for transmitting the records to be released.

CONTESTING RECORDS PROCEDURE:

Any individual desiring to contest or amend information maintained in this system of records should direct his or her request to the system manager noted in ''System Manager(s) and Address,'' or if unknown, the INS FOIA/PA Officer at 425 I Street NW, Washington, DC 20536. The request should state the information being contested, the reason(s) for contesting it, and the proposed amendment thereof. Persons filing such requests should mark the envelope with the following legend, Privacy Act Amendment Request.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is obtained from the individuals covered by the system and from Service officers involved in taking actions on or making decisions about the applications of the individuals covered by the system. Information is also derived from other Federal Government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–10398 Filed 4–26–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services (CJIS) Division; Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review: monthly return of arson offenses known to law enforcement.

The proposed information collection is published to obtain comments from the public until June 28, 2002.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments should address one or more of the following four points:

(1) Evaluate whether for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this

notice, especially regarding the estimated public burden and associated response time, should be directed to Gregory E. Scarbro (phone number and address listed below). Additional information as well as copies of the proposed information collection instrument with instructions are available by contacting Gregory E. Scarbro, Unit Chief, telephone 304–625–4830, FBI, CJIS Division, Crime Statistics Management Unit, E–3, 1000 Custer Hollow Road, Clarksburg, WV 26306.

Overview of This Information Collection

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Monthly Return of Arson Offenses Known to Law Enforcement.

(3) *The agency form number, if any, and applicable component of the department sponsoring the collection:* Form: 1–725. Federal Bureau of Investigation (FBI), Department of Justice (DOJ) and Criminal Justice Information Services (CJIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Local and State Law Enforcement Agencies. This collection is needed to collect information on arson offenses committed throughout the United States. Data are tabulated and published in the annual *Crime in the United States.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to reply:* 16,825 agencies with 201,900 estimated annual responses (includes zero reports); and with an average completion time of 9 minutes a month per report.

(6) *An estimate of the total public burden (in hours) associated with this collection:* 30,285 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: April 23, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice

[FR Doc. 02–10374 Filed 4–26–02; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services (CJIS) Division; Agency Information Collection Activities; Proposed Collection: Comment Request

ACTION: Notice of information under review: number of full-time law inforcement employees as of October 31.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until June 28, 2002.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, *e.g.*, permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to Gregory E. Scarbro (phone number and address listed below). Additional information as well as copies of the proposed information collection instrument with instructions are available by contacting Gregory E. Scarbro, Unit Chief, telephone 304–625–4830, FBI, CJIS Division, Crime Statistics Management Unit, E–3, 1000 Custer Hollow Road, Clarksburg, WV 26306.

Overview of This Information Collection

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Number of Full-Time Law Enforcement Employees as of October 31.

(3) *The agency form number, if any, and applicable component of the department sponsoring the collection:* Form: 1–711a/1–711b/1–711c. Federal Bureau of Investigation (FBI), Department of Justice (DOJ), and Criminal Justice Information Services (CJIS).

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Local and State Law Enforcement Agencies. This collection is needed to collect information to determine the number of Civilian and sworn full-time law enforcement employees throughout the United States. Data are tabulated and published in the annual *Crime in the United States.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to reply:* 16,825 agencies with 16,825 responses (including zero reports); and with an average of 8 minutes a year per responding agency devoted to compilation of data for this information collection.

(6) *An estimate of the total public burden (in hours) associated with this collection:* 2,243 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: April 23, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–10375 Filed 4–26–02; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services (CJIS) Division; Agency Information Collection Activities Proposed Collection: Comment Request

ACTION: Notice of information collection under review: age, sex, and race of persons arrested (18 years of age and over) and age, sex, and race of persons arrested (under 18 years of age).

The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted until June 28, 2002.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to Gregory E. Scarbro (phone number and address listed below). Additional information as well as copies of the proposed information collection instrument with instructions are available by contacting Gregory E. Scarbro, Unit Chief, telephone 304–625–4830, FBI, CJIS Division, Crime Statistics Management Unit, E–3, 1000 Custer Hollow Road, Clarksburg, WV 26306.

Overview of This Information Collection

(1) *Type of information collection:* Extension of Current Collection.

(2) *The title of the form/collection:* Age, Sex, and Race of Persons Arrested (18 Years of Age and Over) and Age, Sex, and Race of Persons Arrested (Under 18 Years of Age)

(3) *The agency form number, if any, and applicable component of the department sponsoring the collection:* Form: 1–708; 1–708a. Federal Bureau of Investigation (FBI) Department of Justice (DOJ), and Criminal Justice Information Services (CJIS).

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Local and State Law Enforcement Agencies. This collection is needed to collect information on the age, sex, and race of all persons arrested throughout the United States. Data are tabulated and published in the annual *Crime in the United States.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to reply:* 16,825 agencies with 403,800 responses (including zero reports); and with an average of 30 minutes of month devoted to compilation of data for this information collection.

(5) *An estimate of the total public burden (in hours) associated with this collection:* 201,900 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: April 23, 2002.

Robert B. Briggs,

Department of Clearance Officer, United States Department of Justice.

[FR Doc. 02–10376 Filed 4–26–02; 8:45 am]

BILLING CODE 4410–02–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 714, from 9 a.m. to 5 p.m., on Monday, May 20, 2002.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after July 1, 2002.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Laura S. Nelson, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/606–8322.

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 02–10378 Filed 4–26–02; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities, NFAH.

ACTION: Additional notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4),

and (6) of section 552b of Title 5, United States Code.

1. *Date:* May 13, 2002.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Extending the Reach: Faculty Research Awards, submitted to the Division of Research Programs at the March 15, 2002 deadline.

2. *Date:* May 14, 2002.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Extending the Reach: Faculty Research Awards, submitted to the Division of Research Programs at the March 15, 2002 deadline.

3. *Date:* May 16, 2002.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Extending the Reach: Faculty Research Awards, submitted to the Division of Research Programs at the March 15, 2002 deadline.

4. *Date:* May 17, 2002.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Extending the Reach: Faculty Research Awards, submitted to the Division of Research Programs at the March 15, 2002 deadline.

5. *Date:* May 24, 2002.
Time: 8:30 am to 5 p.m.
Room: 315.
Program: This meeting will review applications for Humanities Focus Grants, submitted to the Division of Education Programs at the April 15, 2002 deadline.

Laura S. Nelson,
Advisory Committee Management Officer.

[FR Doc. 02–10377 Filed 4–26–02; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 81, Standard Specifications for Granting of Patent Licenses.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Application for licenses are submitted once. Other reports are submitted annually or as other events require.

5. *Who will be required or asked to report:* Applicants for and holder of NRC licenses to NRC inventions.

6. *An estimate of the number of responses:* 1.

7. *The estimated number of annual respondents:* 1.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 37 hours; however, no applications are anticipated during the next three years.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 81 establishes the standard specifications for the issuance of licenses to rights in inventions covered by patents or patent applications invested in the United States, as represented by or in the custody of the Commission and other patents in which the Commission has legal rights.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD. 20852–2738. OMB clearance requests are available at the NRC World Wide Web site: (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 29, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0121), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 23rd day of April, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,
NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–10459 Filed 4–26–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

DATES: Weeks of April 29, May 6, 13, 20, 27, June 3, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 29, 2002

Tuesday, April 30, 2002

9:30 a.m.—Discussion of Intergovernmental Issues (Closed—Ex. 1)

Wednesday, May 1, 2002

8:55 a.m.—Affirmation Session (Public Meeting) (If needed)

9 a.m.—Briefing on Results of Agency Action Review Meeting—Reactors (Public Meeting) (Contact: Robert Pascarelli, 301–415–1245)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of May 6, 2002—Tentative

There are no meetings scheduled for the Week of May 6, 2002.

Week of May 13, 2002—Tentative

Thursday, May 16, 2002

9:25 a.m.—Affirmation Session (Public Meeting) (if needed)

9:30 a.m.—Meeting with World Association of Nuclear Operators (WANO) (Public Meeting)

This meeting will be webcast live at the Web address—*www.nrc.gov*

2 p.m.—Discussion of intragovernmental Issues (Closed—Ex. 9)

Week of May 20, 2002—Tentative

There are no meetings scheduled for the Week of May 20, 2002.

Week of May 27, 2002—Tentative

Tuesday, May 28, 2002

9:30 a.m.—Briefing on Nuclear Material Licensee Decommissioning and Bankruptcy Issues (Public Meeting)

(Contact: Larry Camper, 301–415–7234)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Wednesday, May 29, 2002

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

9:30 a.m.—Briefing on the Status of New Reactor Licensing Activities (Public Meeting) (Contact: Joseph Williams, 301–415–1470)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of June 3, 2002—Tentative

Thursday, June 6, 2002

2 p.m.—Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2)

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: April 25, 2002.

Sandra M. Joosten,

Executive Assistant, Office of the Secretary.

[FR Doc. 02–10593 Filed 4–25–02; 12:33 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[NUREG–1520]

Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued NUREG–1520 entitled *Standard Review Plan (SRP) for the Review of an Application for a Fuel Cycle Facility.* This SRP provides guidance to the NRC reviewers in the Office of Nuclear Material Safety and Safeguards (NMSS) who perform safety and environmental impact reviews of applications to construct or modify and operate nuclear fuel cycle facilities licensed under 10 CFR part 70. As such, adherence to this SRP helps to ensure the quality, uniformity, and predictability of the staff reviews. This SRP also makes information about licensing acceptance criteria widely available to interested members of the public and the regulated industry. Each SRP section addresses the responsibilities of the staff reviewers, the matters that they review, the Commission's regulations pertinent to specific technical matters, the acceptance criteria used by the staff, the process and procedures used to accomplish the review, and the conclusions that are appropriate to summarize the review.

ADDRESSES: NUREG–1520 is available for inspection and copying for a fee at the Commission's Public Document Room, at the U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). The document's accession number is ML020930033.

Copies of NUREG–1520 also may be obtained through the Government Printing Office at *http://www.access.gpo.gov/* by searching for ''NUREG–1520'' under the topic of ''Nuclear Power/200'' or through the National Technical Information Services at a nominal cost. NUREG–1520 also can be downloaded as an Adobe Acrobat PDF file by first setting the browser to *http://www.nrc.gov* and then using the ''Nuclear Materials,'' ''Fuel cycle facilities,'' ''Fuel Cycle Facilities Regulations, Guidance, and Communications'' and ''Guidance'' links in sequence or by going directly to *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1520/.* A free copy of Adobe Acrobat Reader is available from *http://www.adobe.com/products/acrobat/readstep.html.*

FOR FURTHER INFORMATION CONTACT: For further information regarding NUREG–1520, contact Yawar Faraz, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8113.

SUPPLEMENTARY INFORMATION:

Background

The Commission promulgated a major amendment to 10 CFR part 70 on September 18, 2000 (65 FR 56211). The amendment, which primarily involved the addition of subpart H to 10 CFR part 70, identifies appropriate consequence criteria and the level of protection needed to prevent or mitigate accidents that equal or exceed these criteria; requires affected licensees to perform an integrated safety analysis (ISA) to identify potential accidents at the facility and the items relied on for safety necessary to prevent these potential accidents and/or mitigate their consequences; requires the implementation of measures to ensure that the items relied on for safety are available and reliable to perform their function when needed; requires the inclusion of the safety bases, including a summary of the ISA, with the license application; and allows for licensees to make certain changes to their safety program and facilities without prior NRC approval. After revising part 70, the NRC staff updated the existing draft part 70 SRP to address the new requirements. As it had done in revising the regulations in part 70, the NRC staff worked closely with the stakeholders in developing the guidance contained in the SRP. The part 70 stakeholders included representatives of the fuel cycle industry, private citizens, and other groups who declared an interest. The staff had previously issued a separate SRP on the licensing of a mixed oxide (MOX) fuel fabrication facility. The MOX SRP was published in August 2000 as NUREG–1718 and is guiding the staff's ongoing review of the proposed MOX facility.

Dated at Rockville, Maryland, this 18th day of April, 2002.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–10457 Filed 4–26–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 11Ab2–1 and Form SIP, SEC File No. 270–23, OMB Control No. 3235–0043.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission

(''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 11Ab2–1 (Form of Application and Amendments) and Form SIP establish the procedures by which a Securities Information Processor (''SIP'') files and amends its SIP registration form. The information filed with the Commission pursuant to Rule 11Ab2–1 and Form SIP is designed to provide the Commission with the information necessary to make the required findings under the Securities Exchange Act of 1934 (''Act'') before granting the SIP's application for registration. In addition, the requirement that a SIP file an amendment to correct any inaccurate information is designed to assure that the Commission has current, accurate information with respect to the SIP. This information is also made available to members of the public.

Only exclusive SIPs are required to register with the Commission. An exclusive SIP is a SIP that engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication, any information with respect to (i) transactions or quotations on or effected or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic quotation system operated by such association. The federal securities laws require that before the Commission may approve the registration of an exclusive SIP, it must make certain mandatory findings. It takes a SIP applicant approximately 400 hours to prepare documents, which include sufficient information to enable the Commission to make those findings. Currently, there are only two exclusive SIPs registered with the Commission: The Securities Information Automation Corporation (''SIAC'') and The Nasdaq Stock Market, Inc. (''Nasdaq''). SIAC and Nasdaq are required to keep the information on file with the Commission current, which entails filing a form SIP annually to update information. Accordingly, the annual reporting and recordkeeping burden for Rule 11Ab2–1 and Form SIP is 400 hours. This annual reporting and recordkeeping burden does not include the burden hours or cost of amending a Form SIP because the Commission has already overstated the compliance burdens by assuming that the Commission will receive one initial registration pursuant to Rule 11Ab2–1 on Form SIP a year.

Rule 11Ab2–1 and Form SIP do not impose a retention period for any recordkeeping requirements. Completing and filing Form SIP is mandatory before an entity may become an exclusive SIP. Except in cases where confidential treatment is requested by an applicant and granted by the Commission pursuant to the Freedom of Information Act and the rules of the Commission thereunder, information provided in the Form SIP will be routinely available for public inspection. Please note that 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.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 22, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10392 Filed 4–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

[Regulation S–X, SEC File No. 270–3 and OMB Control No. 3235–0009]

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Information collected and information prepared pursuant to Regulation S–X focus on the form and content of, and requirements for, financial statements filed with periodic reports and in connection with the offer and sale of securities. Investors need reasonably current financial statements to make informed investment and voting decisions.

The potential respondents include all entities that file registration statements or reports pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, or the Investment Company Act of 1940.

Regulation S–X specifies the form and content of financial statements when those financial statements are required to be filed by other rules and forms under the federal securities laws. Compliance burdens associated with the financial statements are assigned to the rule or form that directly requires the financial statements to be filed, not to Regulation S–X. Instead, an estimated burden of one hour traditionally has been assigned to Regulation S–X for incidental reading of the regulation. The estimated average burden hours are solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules or forms.

Recordkeeping retention periods are based on the disclosure required by various forms and rules other than Regulation S–X. In general, balance sheets for the preceding two fiscal years, income and cash flow statements for the preceding three fiscal years, and condensed quarterly financial statements must be filed with the Commission. Five year summary financial information is required to be disclosed by some larger registrants.

Filing financial statements, when required by the governing rule or form, is mandatory. Because these statements are provided for the purpose of disseminating information to the securities markets, they are not kept confidential.

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.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments

must be submitted to OMB within 30 days of this notice.

Dated: April 23, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10462 Filed 4–26–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25533; 812–12808]

Price Communications Corporation et al.; Notice of Application

April 23, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under section 3(b)(2) of the Investment Company Act of 1940 (the ''Act'') or, alternatively, section 6(c) of the Act.

SUMMARY OF APPLICATION: Price Communications Corporation (''Price'') and Price Communications Wireless, Inc. (''PCW'' and, together with Price, ''Applicants'') request an order under section 3(b)(2) of the Act declaring that PCW is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities or, alternatively, under section 6(c) of the Act exempting Price and PCW from all provisions of the Act for a period no longer than four years.

FILING DATE: The application was filed on April 17, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 21, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 45 Rockefeller Plaza, New York, NY 10021.

FOR FURTHER INFORMATION, CONTACT: Janet M. Grossnickle, Branch Chief, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Price, a Delaware corporation, is a publicly-held company with shares listed and traded on the New York Stock Exchange that has conducted a national communications business since 1981. PCW, also a Delaware corporation, is an indirect wholly-owned subsidiary of Price and is Price's sole remaining business property. PCW and a predecessor corporation have been continuously and exclusively engaged since 1987 in the business of constructing, developing, managing and operating cellular telephone systems in the southeastern United States under licenses from the Federal Communications Commission (''FCC'').

2. On December 18, 2001, Price and PCW entered into a transaction agreement (''Transaction Agreement'') with Cellco Partnership (''Cellco'') pursuant to which the parties agreed to form and operate a new joint venture in limited partnership form (''New LP''). PCW agreed to contribute its cellular business assets and approximately $150 million in cash to New LP (''Contribution'') in consideration for a limited partnership interest having an initial valuation of approximately $1.150 billion (or approximately 45% of New LP's initial capital) and carrying the economic preferences and management rights set forth in New LP's Agreement of Limited Partnership (''Partnership Agreement''). New LP will be majority-owned and primarily controlled by Cellco through two wholly-owned subsidiaries which will contribute business assets, a note and cash (representing approximately 55% of New LP's initial capital). Cellco is the leading provider of wireless communications in the United States and is a joint venture between Verizon Communications, Inc. (''Verizon Communications'') and Vodafone Group plc. The date on which the contributions are to be made and New LP will commence operations (the ''Closing Date'') is expected to occur before the end of the second quarter of 2002.

3. The acquisition of PCW's cellular operations through New LP represents a geographical expansion of Cellco's business in preparation for an initial public offering by a corporate subsidiary, Verizon Wireless, Inc. (''Verizon Wireless''). A registration statement relating to this offering (''Verizon Wireless IPO'') was filed with the Commission under the Securities Act of 1933 on November 9, 2001. Applicants state that from Price's point of view PCW's Contribution and participation in New LP represents a transitional stage in Price's movement from ownership and management of an independent wireless business to liquidation. Since the business assets to be contributed by PCW to New LP represent substantially all of Price's assets, the Contribution requires approval by the shareholders of Price and a proxy solicitation for that purpose will begin in early May 2002.

4. New LP will have a management committee (''Management Committee'') consisting of three members, one appointed by PCW and two by the managing general partner. Under the Partnership Agreement, the managing general partner will need approval of a majority of the Management Committee, including the member appointed by PCW, with respect to a variety of matters relating to New LP and its business, as more fully described in the application. A Cellco subsidiary will serve as managing general partner of New LP and will have active charge of the day-to-day business operations of New LP. Applicants state that, under the Partnership Agreement, any profits of New LP will be allocated to PCW annually in an amount equal to 4% annually of PCW's capital account before any profits are allocated to Cellco's subsidiaries. Any losses incurred by New LP will be allocated to the capital accounts of Cellco's subsidiaries before being allocated to PCW.

5. If a Verizon Wireless IPO producing gross proceeds of $4 billion and meeting certain other conditions occurs within four years from the Closing Date, PCW will have the right, subject to approval by the shareholders of Price, to exchange the limited partnership interest in New LP for Verizon Wireless shares at the initial public offering price. If the Verizon Wireless IPO does not occur within four years from the Closing Date, or PCW exercises this right but Price's shareholders do not approve that exchange, the limited partnership interest in New LP must be exchanged for shares of Verizon Communications no later than ten years after the Closing Date.[1] Applicants state

[1] A shareholder vote to approve the Contribution also will constitute approval of the exchange of PCW's limited partnership interest in New LP for

Continued

that, if a liquidation takes place, it will in all likelihood result in the distribution to Price's shareholders of the Verizon Wireless or Verizon Communications shares received in exchange for PCW's limited partnership interest in New LP. PCW's limited partnership interest in New LP generally will be nontransferable, apart from the exchanges described above.[2]

Applicants' Legal Analysis

1. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40 percent of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Under section 3(a)(2) of the Act, investment securities include all securities except Government securities, securities issued by employee securities companies, and securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exclusions from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act. Applicants state that the limited partnership interest in New LP that PCW will receive for the Contribution may cause PCW and Price to be deemed investment companies within the meaning of section 3(a)(1)(C) of the Act.

2. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C) of the Act, the SEC may issue an order declaring an issuer to be primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities either directly, through majority-owned subsidiaries, or through controlled companies conducting similar types of businesses.[3]

3. Applicants request an order under section 3(b)(2) declaring that, following the Contribution, notwithstanding section 3(a)(1)(C) of the Act, PCW will be primarily engaged, through New LP, in a business other than that of investing, reinvesting, owning, holding or trading in securities. Applicants state that neither Price nor PCW is now an investment company or will be an investment company within the meaning of section 3(a)(1)(A) of the Act following the Contribution.[4] Applicants state that New LP will be a company controlled by PCW within the meaning of the Act. Applicants submit that PCW will be primarily engaged in the cellular telephone business through its 45% ownership interest in New LP and its exercise of the management rights conferred by the Partnership Agreement.

4. Under section 3(b)(2) of the Act, in determining whether an applicant is primarily engaged in a non-investment company business, the SEC considers the following factors: (a) Applicant's historical development; (b) applicant's public representations of policy; (c) the activities of applicant's officers and directors; (d) the nature of applicant's present assets; and (e) the sources of applicant's present income.[5]

a. *Historical Development:* PCW states that it and its predecessor corporation have been operating companies engaged in the cellular telephone business under FCC licensing and regulation since 1987.

b. *Public Representations of Policy:* PCW states that it and its predecessor corporation have consistently held themselves out to the public as an operator of cellular telephone systems and a provider of cellular telephone services. PCW states that it never has held itself out, and does not now hold itself out, as an investment company.

c. *Activities of Officers and Directors:* PCW states that it has a sold director (who also is President and Chief Executive Officer of Price) and two executive officers. After the Contribution, Price will designate and PCW will appoint one of PCW's executive officers to serve on the Management Committee of New LP. Under the Partnership Agreement, the Management Committee will function on a variety of operating matters—such as approval of annual operating budgets, incurrence of debt, disposition of licenses, appointment on independent auditor, approval of annual financial statements and selection of technology—as well as a wide variety of major transactions and other business matters, such as mergers and consolidations, business acquisitions, acquisitions and dispositions of assets, disposition of licenses, entry into new business areas and distributions to and dealings with partners.

d. *Nature of Assets:* Applicants state that, on a pro forma basis assuming that the Contribution occurred, PCW's limited partnership interest in New LP represented approximately 97.5% of PCW's total assets on an unconsolidated basis, as of December 31, 2001. (The remaining 2.5% of PCW's total assets consisted of cash and short-term, income producing cash equivalent investments.)

e. *Sources of Income:* Applicants state that, on a pro forma basis assuming that the Contribution occurred, approximately 97.46% of its net income for the 12 months ended December 31, 2001, would have been attributable to New LP.

5. PCW asserts that it meets the requirements for an order under section 3(b)(2) of the Act. PCW agrees that, if an order under section 3(b)(2) is granted, the order will terminate without action on the part of the Commission on the earliest of (i) the date on which PCW ceases to own the limited partnership interest in New LP as described in the application, (ii) the date on which PCW makes an acquisition or disposition of assets by reason of which its limited partnership interest in New LP ceases to constitute at least 80% (or is further reduced below 80%) of the total assets of PCW on an unconsolidated basis, and (iii) the fourth anniversary of the Closing Date.

6. In the alternative, Applicants request an order under section 6(c) of the Act exempting Price and PCW from all provisions of the Act until no later than the fourth anniversary of the Closing Date. Section 6(c) provides, in relevant part, that the Commission may conditionally or unconditionally exempt any person from any provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

7. Applicants state that neither Price nor PCW has any of the structural features, functions or objectives of an investment company, as evidenced by the identities, business activities and

shares of Verizon Communications. However, an exchange of the limited partnership interest in New LP for shares of Verizon Wireless will require a separate vote of the shareholders of Price after completion of the Verizon Wireless IPO.

[2] Applicants state that the only transfers permitted to PCW under the Partnership Agreement are a transfer of its entire interest in New LP in connection with its liquidation or merger with or into Price or a corporation wholly-owned by Price and a pledge of its entire interest in New LP in connection with a financing transaction. Applicants state that they have no current plans for any such financing transaction and recognize that, under the proposed conditions, any such financing transaction could result in a termination of any order granted pursuant to the application.

[3] Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company. That section creates a presumption that an owner of more than 25% of a company's outstanding voting securities controls the company, and that an owner of 25% or less of a company's outstanding voting securities does not control the company.

[4] Section 2(a(1)(A) provides that an issuer is an investment company if it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities.

[5] *See Tonopah Mining Company of Nevada,* 26 S.E.C. 426 (1946).

strategic objectives of the parties to the Transaction Agreement, the private and commercial nature of the joint venture they propose to create and carry on through New LP, and the nontransferability of PCW's interest in New LP. Applicants state that, after the Contribution, PCW's interest in New LP will constitute more than 97% of PCW's total assets and Price's indirect interest in New LP will constitute substantially all of Price's total assets. Price has publicly announced its intention to liquidate after PCW's limited partnership interest in New LP is exchanged for shares of Verizon Wireless or Verizon Communications. Applicants also state that the conditions to the requested order under section 6(c) would further assure that the requested exemption is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order under section 6(c) of the Act will be subject to the following conditions:

1. Neither of the Applicants will be or will hold itself out as being engaged in the business of investing, reinvesting or trading in securities.

2. PCW will not acquire any investment securities, as that term is defined in section 3(a)(2) of the Act, except (a) the limited partnership interest in New LP described in the application and (b) for cash management purposes, certificates of deposit, bankers acceptances and time deposits maturing within 180 days from the date of acquisition, and shares of money market funds.

3. Price will not acquire any investment securities, as that term is defined in section 3(a)(2) of the Act, except securities the holding of which is consistent with the goals of preserving capital and maintaining liquidity.

4. The order will terminate on the earliest of (a) the date on which PCW ceases to own the limited partnership interest in New LP as described in the application, (b) the date on which PCW makes an acquisition or disposition of assets by reason of which its limited partnership interest in New LP ceases to constitute at least 80% (or is further reduced below 80%) of the total assets of PCW on an unconsolidated basis, (c) the date on which Price makes an acquisition or disposition of assets by reason of which Price's ownership interest in PCW ceases to constitute at least 80% (or is further reduced below 80%) of Price's total assets on an unconsolidated basis, and (d) the fourth anniversary of the Closing Date.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10391 Filed 4–26–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25532; 812–12783]

Wells Fargo Funds Trust and Wells Fargo Funds Management LLC; Notice of Application

April 23, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of a registered open-end management investment company to acquire all of the assets, subject to the liabilities, of certain other series of the investment company (the ''Reorganization''). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: Wells Fargo Funds Trust (''Funds Trust'') and Wells Fargo Funds Management, LLC (''Funds Management'').

FILING DATES: The application was filed on February 15, 2002, and amended on April 16, 2002. Applicants have agreed to file another amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING:

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 16, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; *Applicants:* C. David Messman, *Esq.,* Wells Fargo Funds Trust, Wells Fargo Funds Management LLC, 525 Market Street, San Francisco, California 94105; Marco E. Adelfio, *Esq.,* Eileen M. Smiley, *Esq.,* Morrison & Foerster LLP, 2000 Pennsylvania Avenue NW, Suite 5500, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Todd Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Funds Trust, a Delaware business trust is registered under the Act as an open-end management investment company. Funds Trust is comprised of seventy-two series, four of which are involved in the proposed Reorganization. International Equity Fund and the Small Cap Opportunities Fund are the ''Acquiring Funds'' and International Fund and the Small Cap Value Fund are the ''Target Funds'', and together with the Acquiring Funds, the ''Funds.'' The Target Funds are feeder funds that do not invest directly in portfolio securities. Rather, each Target Fund invests in a corresponding core portfolio (each a ''Core Portfolio'' and collectively the ''Core Portfolios,'') of Wells Fargo Core Trust (''Core Trust'') that has the same investment objectives and strategies as the corresponding Target Fund. Core Trust, a Delaware business trust, is registered under the Act as an open-end management investment company.

2. Funds Management serves directly as the investment adviser to each of the Acquiring Funds and serves indirectly as the investment adviser to each of the Target Funds. Funds Management serves as the investment adviser for each of the Core Portfolios of Core Trust in which the Target Funds invest. Funds Management is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the ''Advisers Act''). Funds Management is an indirect wholly-owned subsidiary of Wells Fargo & Company. As of December 27, 2001, Wells Fargo Bank Minnesota, N.A. (''Wells Fargo, MN''), a wholly-owned subsidiary of Wells Fargo & Company, held of record with sole or shared power to vote, more than 25% of the

outstanding voting securities of each Target Fund.

3. On November 6, 2001, the board of trustees of Funds Trust (''Board''), including all of the trustees who are not ''interested persons'' within the meaning of section (2)(a)(19) of the Act (the ''Independent Trustees''), unanimously approved an Agreement and Plan of Reorganization (the ''Reorganization Agreement'') on behalf of the Target Funds and the Acquiring Funds. Pursuant to the Reorganization Agreement, at the Effective Time (defined below) of the Reorganization, each class of each Target Fund will transfer all of its assets to a corresponding class of the Acquiring Fund, subject to the assumption by such class of the Acquiring Fund of all the liabilities of the corresponding class of the Target Fund, in exchange for shares of the designated class of such Acquiring Fund that have an aggregate net asset value equal to the value of the Target Fund's shares. The Target Fund would then distribute to its shareholders the corresponding Acquiring Fund shares in liquidation of the Target Fund. The Funds will determine the value of their net assets as of the Valuation Time (defined below) in accordance with Funds Trust's then current valuation procedures as described in its prospectus and statement of additional information. The Valuation Time is the close of regular trading on the New York Stock Exchange, as of which time the net asset value of each class of shares of each of the Funds is determined for purposes of the Reorganization. Under the terms of the Reorganization Agreement, unless the parties agree differently, the Valuation Time will occur on the Closing Date. The Effective Time of the Reorganization is the date and time on which the delivery of the Target Funds' assets and the Acquiring Funds' shares occurs, which will be the first business day following the Closing Date.

4. Applicants state that the Board has determined that each Acquiring Fund and its corresponding Target Fund have compatible investment objectives and strategies. Each of the Funds offers Institutional Class shares and the International Fund and the International Equity Fund each also offer Class A and Class B shares. Applicants state that the rights and obligations of each class of each Acquiring Fund are identical to those of the corresponding share class of the corresponding Target Fund. For purposes of calculating any contingent deferred sales charge (''CDSC''), shareholders of Class A and B Shares of a Target Fund will be deemed to have held the Class A and Class B Shares of the corresponding Acquiring Fund since the date the shareholders initially purchased the shares of that Target Fund. No front-end sales load or CDSC will be imposed on the exchange of shares occurring as part of the Reorganization. Funds Management and/or its affiliated persons will bear all expenses related to the Reorganization.

5. The Board, including all the Independent Trustees, found on behalf of each of the Target and Acquiring Funds, that participation in the Reorganization, as contemplated by the Reorganization Agreement, is in the best interests of each Fund and its shareholders, and that the interests of the existing shareholders of each Fund would not be diluted as a result of the Reorganization. The Board considered among other things: (a) The Reorganization Agreement; (b) the compatibility of each Target Fund's investment objective, principal investment strategies, and investment policies with those of the corresponding Acquiring Fund; (c) the benefits associated with increased asset levels, including greater purchasing power and the ability to diversify more broadly, and the enhanced viability of the combined Funds; and (d) the fact that all of the expenses associated with the Reorganization would be borne by Funds Management and not Fund shareholders.

6. The Reorganization is subject to a number of conditions precedent including: (a) That a registration statement under the Securities Act of 1933 on Form N–14 shall have become effective; (b) that shareholders of the Target Funds shall have approved the Reorganization Agreement; (c) that if necessary, the Target Funds shall have declared a dividend that, together with all previous dividends, shall have the effect of distributing to such Target Fund's shareholders all of its previously undistributed investment company taxable income and net capital gain; (d) the Funds will have received opinions of counsel that the Reorganization will be tax-free for federal income tax purposes to the Target Fund, the corresponding Acquiring Fund and their respective shareholders; and (e) applicants will have received exemptive relief from the Commission to permit the Reorganization. Pursuant to a vote of a majority of the Board, Funds Trust may terminate the Reorganization Agreement with respect to either or both sets of Funds any time prior to the Effective Time of the Reorganization. Applicants represent that they will not amend the Reorganization Agreement in any manner that materially affects the application without prior approval of the Commission staff.

7. The Combined Proxy Statement / Prospectus relating to the Reorganization of the Funds was initially filed with the Commission on December 6, 2001, and became automatically effective on January 6, 2002. The final Combined Proxy Statement/ Prospectus was filed with the Commission on January 25, 2002, in final form and became automatically effective on the same day. Finally, a supplement to the Combined Proxy Statement/ Prospectus was filed with the Commission on February 14, 2002. The Combined Proxy Statement / Prospectus was mailed to shareholders of the Target Funds beginning on January 31, 2002, and the supplement was mailed to shareholders on March 1, 2002. Shareholders of the Target Funds will vote on the proposed Reorganization at special meetings of shareholders expected to occur on April 26, 2002, and the Closing Date is expected to be May 17, 2002.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Funds may be deemed affiliated persons and thus the Reorganization may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied.

3. Applicants state that they may not rely on rule 17a-8 because the Funds may be deemed to be affiliated persons

for reasons other than those set forth in the rule. Wells Fargo, MN currently holds of record in its name more than 25% of the outstanding voting securities of each Target Fund. Specifically, Wells Fargo, MN holds more than 25% of the outstanding voting securities of the International Fund for the benefit of the Cash Balance Pension Plan (''CBPP'') and also holds more than 5% of the outstanding voting securities of the Small Cap Value Fund for the benefit of the Voluntary Employee's Beneficiary Association (''VEBA''), a trust that is used to fund employee benefits for employees of Wells Fargo & Company and its subsidiaries. (CBPP and VEBA are collectively referred to as the ''Affiliated Accounts.'') Applicants state that by virtue of the Affiliated Accounts' ownership and Wells Fargo, MN's voting control and economic interest in the Affiliated Accounts, each Target Fund may be deemed to be an affiliated person of an affiliated person of its corresponding Acquiring Fund, and vice versa, for reasons not based solely on their common adviser, common directors/trustees and/or common officers. Wells Fargo, MN intends to engage an independent fiduciary to vote the shares of the Affiliated Accounts.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to complete the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the Board, including all of the Independent Trustees, has determined that participation in the Reorganization is in the best interests of each Fund, and that the interests of the Funds' shareholders will not be diluted as a result of the Reorganization. The applicants also state that the Reorganization will be based on the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10463 Filed 4–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45790; File No. SR–NASD–2002–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to the Expansion From Three to Five the Levels of Aggregated Price and Size Information Displayed in Nasdaq's Future Order Display and Collector Facility

April 19, 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 April 18, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to expand, from three to five, the levels of aggregated price and size information displayed in Nasdaq's future Order Display and Collector Facility (''SuperMontage''). Nasdaq will implement this rule change within 30 days after successful completion of SuperMontage user acceptance testing. The text of the proposed rule change is available at the Office of the Secretary, Nasdaq, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its ongoing preparation for the launch of SuperMontage, Nasdaq is engaging in a continuing review of the system's functionality and rules with a view to constant improvement. As a result of this review, and in consultation with industry professionals, Nasdaq has determined to expand to five the number of price levels aggregated and displayed via the SuperMontage.

As approved by the Commission, SuperMontage would only display the top three price levels of aggregated price and size information for both the bid and offer side of the market for a particular security. As a result of discussions with market participants and Nasdaq's experience with decimalization, Nasdaq has determined to expand the availability of aggregated price and share amount information around the inside price by displaying, and disseminating through data vendors, five price levels (the inside price plus four additional price levels away) of trading interest on both the bid and offer side of the market.

Nasdaq believes that expanding the amount of aggregated trading interest information available through SuperMontage to five price levels will further increase transparency and assist market participants in making informed trading decisions.

2. Statutory Basis

Nasdaq believes the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On April 5, 2002, the Commission received an amendment from Nasdaq which made conforming changes to NASD Rules 4707(d) and 4710(f). *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 5, 2002 (''Amendment No. 1''). Subsequently, on April 18, 2002, the Commission received an amendment from Nasdaq which corrected a citation in its rule text and replaced Amendment No. 1 in its entirety. *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 18, 2002 (''Amendment No. 2''). This proposed rule change is treated as filed on the date that Amendment No. 2 was received.

the Act[4] in that the proposal is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received any written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and subparagraph (f)(5) of Rule 19b–4 thereunder[6] because it effects a change in an existing order-entry or trading system of a self-regulatory organization that does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) have the effect of limiting the access to or availability of the system. At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–22 and should be submitted by May 20, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10393 Filed 4–26–02; 8:45 am]

BILLING CODE 8010–01–U

[4] 15 U.S.C. 78o–3(b)(6).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45801; File No. SR–NASD–2002–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Revisions to the Limited Principal—Financial and Operations (Series 27) Examination Program

April 22, 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 April 10, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated this proposed rule change as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization under Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b-4(f)(1)[4] thereunder, which renders the proposal effective upon filing with the Commission.[5] 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

NASD Regulation is proposing revisions to the Limited Principal—Financial and Operations (Series 27) examination program. The proposed revisions update the Series 27 examination study outline,[6] selection specifications,[7] and question bank[8] to reflect changes to the laws, rules, and regulations covered by the examination and to reflect more accurately the duties and responsibilities of a Series 27 principal. Additionally, the proposed revisions change the format of the Series 27 examination. The proposed revisions do not result in any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD Regulation or the NASD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000.

[6] The text of the Series 27 study outline is available at NASD Regulation and at the Commission.

[7] NASD Regulation ha requested confidential treatment for the Series 27 examination, and thus the specifications are omitted from this filing. The specifications have been filed separately with the Commission pursuant to Rule 24b–2 under the Act. 17 CFR 240.24b–2.

[8] Based upon instruction from the Commission staff, NASD Regulation is not filing the question bank for Commission review. *See* Letter to Alden S. Adkins, Senior Vice President and Genral Counsel, NASD Regulation, from Belinda Blaine, Associated Director, Division of Market Regulation, SEC, dated July 24, 2000.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Section 15A(g)(3) of the Act,[9] which requires the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members, the NASD has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD Regulation periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The Series 27 examination is an NASD examination that qualifies an individual to function as a limited principal responsible for matters involving a member's financial and operational management. A Series 27 principal may serve as a member's chief financial officer.

A committee of industry representatives, together with NASD Regulation staff, recently undertook a review of the Series 27 examination program. As a result of this review, NASD Regulation is proposing revisions to the Series 27 examination study outline to reflect changes in relevant laws, rules, and regulations covered by the examination, including rules concerning anti-money laundering and Regulation S-P,[10] and to reflect more accurately the duties and responsibilities of a Series 27 principal.

Additionally, NASD Regulation is proposing to reformat the examination. Currently, the Series 27 examination is a two-part test graded on a 140 point system. The first part includes 100 multiple-choice questions (each worth one point) and the second part, which is worth 40 points requires individuals to perform computations based on financial information in a member's trial balance. Individuals taking the examination may be given partial credit for answers to computational questions in the second part. NASD Regulation is proposing to change the format of the Series 27 examination to make it a one-part examination with a total of 145 multiple-choice questions (each worth one point), and will not give partial credit for any answers.

To adequately test the material covered in the revised examination, NASD Regulation is proposing to reorganize the substantive sections of the outline and to allocate questions to each section as follows: Keeping and Preservation of Records and Broker/Dealer Financial Reporting Requirements, 16 questions; Net Capital Requirements, 44 questions; Customer Protection, 37 questions; Municipal Securities Rulemaking Board Regulations, 10 questions; Federal Reserve Board Regulations, 8 questions; Uniform Practice Rules, 15 questions; and Other Relevant Regulations and Interpretations, 15 questions.

NASD Regulation is proposing similar changes to the corresponding sections of the Series 27 examination selection specifications and question bank. The Series 27 examination will remain a 3½-hour examination and the passing score for the examination will continue to be 70%.

2. Statutory Basis

NASD Regulation believes that the proposed revisions are consistent with the provisions of Sections 15A(b)(6)[11] and 15A(g)(3) of the Act,[12] which authorize the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [13] and Rule 19b-4(f)(1) [14] thereunder, in that the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD Regulation proposes to implement the revised Series 27 examination program on August 1, 2002.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD–2002–48 and should be submitted by May 20, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10394 Filed 4–26–02; 8:45 am]

BILLING CODE 8010–01–U

[9] 15 U.S.C. 78o–3(g)(3).

[10] 17 CFR 248.1–18; 17 CFR 248.30; and 17 CFR 248, Appendix A.

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78o–3(g)(3).

[13] 15 U.S.C. 78s(b)(3)(A)(i).

[14] 17 CFR 240.19b–4(f)(1).

[15] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies

AGENCY: Social Security Administration (SSA).

ACTION: Notice; comments requested.

SUMMARY: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554) directs the Office of

Management and Budget (OMB) to issue government-wide guidelines for Federal agencies to ensure and maximize the quality, objectivity, utility and integrity of information disseminated by Federal agencies. In response, OMB issued government-wide guidelines on February 22, 2002 (67 FR 8452), as revised on March 4, 2002 (67 FR 9797), that require Federal agencies that are subject to the Paperwork Reduction Act (44 U.S.C. chapter 35) to develop and publish their own information quality guidelines along with administrative mechanisms to allow persons to request correction of information.

This notice serves to announce the availability of SSA section 515 draft quality guidelines and corrections procedures on the agency's web site *http://www.ssa.gov/515.* SSA is requesting comments on section 515 draft guidelines for ensuring and maximizing the quality, objectivity, utility and integrity of disseminated information and on the proposed mechanisms for seeking correction of information.

The SSA will consider all comments received in response to this notice and will develop proposed final guidelines and mechanisms for seeking correction for submission to OMB by July 1, 2002.

Notice of SSA's final guidelines and correction procedures will be published in the **Federal Register** and will be available on the SSA web site no later than October 1, 2002.

DATES: Submit comments on or before May 29, 2002.

ADDRESSES: Comments transmitted by FAX or e-mail may be sent to Mr. Brian Greenberg, Office of Research, Evaluation and Statistics at FAX number (410) 965–3308 or e-mail to *Brian.V.Greenberg@ssa.gov.* While comments by e-mail or fax are preferable, you may send your comments by mail to Mr. Brian Greenberg, Office of Research, Evaluation and Statistics, Room 4–C–15 Operations, 6401 Security Boulevard, Baltimore, MD 21235–6401. Mr. Greenberg may also be reached by phone at 410–965–0131.

Dated: April 22, 2002.

Paul N. Van de Water,

Acting Deputy Commissioner for Policy.

[FR Doc. 02–10379 Filed 4–26–02; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Three Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on three currently approved public information collection that will be submitted to OMB for renewal

DATES: Comments must be received on or before June 28, 2002.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. 2120–0015, Airport Master Record. 49 USC 329(b) empowers and directs the Secretary of Transportation to collect and disseminate information on civil aeronautics. Aeronautical information is required by the FAA in order to carry out FAA missions related to safety, flight planning, forecasting, airport engineering, and Federal grants analyses. The database is the basic source of information for private, state, Federal and government aeronautical charts and publications. The current estimated annual reporting burden is 4,355 hours.

2. 2120–0572, Operating Procedures for Airport Traffic Control Towers (ATCT) That Are Not Operated By or Under Contract with the U.S. (Non-Federal). The intent of the Advisory Circular and this collection of information is to maintain a high level of air safety without regulating certain entities that previously were not regulated. The FAA is requesting operators of non-Federal ATCT to comply voluntarily with the regulations as stated in this AC, as well as to submit information voluntarily by using the listed forms, as do FAA Air Traffic personnel. The current estimated annual reporting burden is 1,606 hours.

3. 2120–0648, Certification: Airmen Other Than Flight Crewmembers—Part 65; Aircraft Dispatches—Subpart C; and Aircraft Dispatcher Courses—Appendix A. Under the authority of Title 49 USC, Section 44703 specifically empowers the Secretary of Transportation to issue airmen certificates to properly qualified persons. This request covers the burden for certificate for aircraft dispatchers. The current estimated annual reporting burden is 3,911 hours.

Issued in Washington, DC on April 22, 2002.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 02–10502 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–31]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 20, 2002.

ADDRESSES: Send comments on any petition to the Docket Management

System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–11981 at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

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

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–11981.

Petitioner: Clay Lacy Aviation.

Section of 14 CFR Affected: 14 CFR 25.853(c).

Description of Relief Sought: A one-time, five-year exemption from meeting the fire blocking test requirement for passenger seats of 14 CFR 25.853(c) for the Falcon 900EX airplane.

[FR Doc. 02–9946 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–02–C–00–AVL, Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Asheville Regional Airport, Asheville, 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 impose and use the revenue from a PFC at Asheville Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 29, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Campus Building, Suite 2–260, 1701 Columbia Avenue, College Park, GA 30337.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. C.M. Armour, A.A.E., Airport Director of the Asheville Regional Airport Authority at the following address; Asheville Regional Airport, 708 Airport Road, Fletcher, NC 28732.

Air carriers and foreign air carriers may submit copes of written comments previously provided to the Asheville Regional Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337, 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 impose and use the revenue from a PFC at Asheville Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 18, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Asheville Regional Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 17, 2002.

The following is a brief overview of the application.

Proposed charge effective date: July 1, 2002.

Proposed charge expiration date: August 1, 2006.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $ amount requested for impose and/or use.

Brief description of proposed project(s): list project(s) by major project element.

Level of the proposed PFC: $ 4.00, 4.50.

Total estimated PFC revenue: $4,987,794.00.

Brief description of proposed project(s):

Fire Alarm System
FIDs (fit into display)
Runway 16 ERSA, Phase I
Runway 16 ERSA, Phase II
Rehab Sidewalks
Loop Road Modifications
Perimeter Security Road
ARFF Road
Perimeter Fencing
Runway 16 ERSA, Phase III
Roof Replacement
Backup Generators
Chiller Replacement
Master Plan Update
Baggage Belt
Modification to loading Bridge
Terminal Improvements (ticket counter & baggage area)
Recable & Raise HIRLs
RSA Improvements (includes taxiway safety area)
Expand Baggage Claim (includes cubside expansion)
Expand Terminal (holding room)
New Airfield Lighting Vault
GA Ramp Expansion (includes bypass taxiway)
Rehabilitate Runway & Taxiway
Passenger Lift Device
Runway 16, CAT II Touchdown Zone lights
Raise MITL
Terminal Fire Protection System (sprinkler)
Modify Terminal (convert Rental to bus/taxi/van)
Northern Access System
Perimeter Security Road, Phase II
Emergency Response Trailer
Security Enhancements
PFC Administrative Costs

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: ATCO filing FAA form 1800–31Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: 1701 Columbia Avenue, College Park, GA 30337.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Asheville Regional Airport Authority.

Issued in College Park, Georgia on April 22, 2002.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 02–10503 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Texarkana Regional Airport, Texarkana AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Texarkana 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) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 29, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Stephen Luebbert, Manager of Texarkana Regional Airport at the following address: Mr. Stephen Luebbert, Airport Division, Texarkana Regional Airport, 201 Airport Way, Texarkana, AR 71854.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airport Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610. (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Texarkana 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) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 18, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport 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 August 15, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1, 2005.

Proposed charge expiration date: October 1, 2005.

Total estimated PFC revenue: $63,855.

PFC application number: 02–04–C–00–TXK.

Brief description of proposed project(s):

Projects To Impose and Use PFC's

1. Improve Runway 31 Safety Area

Proposed class or classes of air carriers to be exempted from collecting PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Texarkana Regional Airport.

Issued in Fort Worth, Texas on April 18, 2002.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 02–10501 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Proposed Policy Statement Numbers ANE–2001–35.13–R0 and ANE–2001–35.31–R0]

Policy for Propeller Level Failure Effects; Policy for Bird Strike, Lightning, and Centrifugal Load Testing for Composite Propeller Blades

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed policy statements; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy for propeller-level failure effects and proposed policy for bird strike, lightning, and centrifugal load testing for composite propeller blades.

DATES: Comments must be received by June 14, 2002.

ADDRESSES: Send all comments on the proposed policy to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jay.turnberg@faa.gov;* telephone: (781) 238–7116; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy statements are available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/enginedraftpolicyby.htm.* If you do not have access to the Internet, you may request a copy of the proposed policies by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.** The FAA invites interested parties to comment on the proposed policies. Comments should identify the subject of the proposed policy and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT.** The FAA will consider all comments received by the closing date before issuing the final policies.

Background

Many new propeller certification programs include composite blades and spinners and electronic controls. Part 35 of Title 14 of the Code of Federal Regulations (14 CFR part 35) does not have explicit safety standards for the substantiation of propellers with composite blades and spinners for bird strike, lightning strike, and centrifugal loads, nor does it address electronic controls and safety assessment. The safety standards for these design features and analyses have been incorporated into the propeller certification basis by issuing special conditions. Until rulemaking is finalized to incorporate these standards into part 35, individual propeller certifications that contain these novel or unusual design features must continue to be addressed with special conditions.

Proposed Policy Statement Number ANE–2001–35.13–R0 would provide guidance for the development of those special conditions with regard to propeller level failure effects. Proposed Policy Statement Number ANE–2001–

35.31–R0 would provide guidance for structurally substantiating propellers with composite blades and spinners for bird strike, lightning strike, and centrifugal loads. The proposed policies would not establish new requirements.

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

Issued in Burlington, Massachusetts, on April 17, 2002.

Francis Favara,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–10497 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Pulaski and Laurel Counties, KY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) for a proposed highway project in the south-central portion of Kentucky, between the proposed Somerset Northern Bypass and London.

FOR FURTHER INFORMATION CONTACT: Evan Wisniewski, Project Development Team Leader, Federal Highway Administration, 300 West Broadway, Frankfort, Kentucky, 40601, (502) 223–6740, e-mail: *evan.wisniewski@fhwa.dot.gov;* or David Beattie, Project Manager, Kentucky Transportation Cabinet, District 8, P.O. Box 780, Somerset, Kentucky, 42501, (606) 677–4017, e-mail: *David.Beattie@mail.state.ky.us.*

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at *http://www.access.gpo.gov.nara.*

Background

The FHWA, in cooperation with the Kentucky Transportation Cabinet (KYTC), will prepare an Environmental Impact Statement (EIS) for the proposed project to study potential transportation improvements in the northern corridor identified in the *I–66 Southern Kentucky Corridor Scoping Study,* completed in June 2000. This corridor is located in the south-central portion of Kentucky, between Somerset in Pulaski County and London in Laurel County.

As part of the National Environmental Policy Act (NEPA) process, FHWA will be preparing an EIS to assess the social, economic, and environmental impacts of the proposed project. The EIS will include a reasonable range of alternatives that will address the purpose and need of the project as well as a no-build alternative.

A Public Involvement Plan, including the development of a Citizens Committee, will be established and will facilitate public involvement throughout the project development process. The resource agencies will be solicited for their input throughout the life of this project. Throughout the development process, advance notice of the time and place of public meetings and/or hearings will be given in order to provide an opportunity for citizen attendance and comments.

The Transamerica Transportation Corridor (I–66) was defined in an *Interstate 66 Feasibility Study.* This study focused on the feasibility of various alternative transportation concepts. The report recognized that further analyses could find that some individual segments of the Transamerica Transportation Corridor would be more feasible than others and would be more desirable from a state or regional perspective. The *Interstate 66 Feasibility Study* was funded through the 1991 U.S. Department of Transportation Appropriation Act.

The Transamerica Transportation Corridor extended from the East Coast to the West Coast, and was generally located between I–70 and I–40. It included a ''Southern Kentucky Corridor'' centered on the cities of Pikeville, Jenkins, Hazard, London, Somerset, Columbia, Bowling Green, Hopkinsville, Benton and Paducah.

The *Southern Kentucky Corridor, Economic Justification & Financial Feasibility Study, May 1997,* followed the *Interstate 66 Feasibility Study.* This study included public participation through an advisory committee, public meetings, press releases, and newsletters sent to all parties who expressed an interest in the Southern Kentucky Corridor. The study identified the Somerset to London segment (connecting the Louie B. Nunn Parkway with the Daniel Boone Parkway) of the proposed I–66 Southern Kentucky Corridor as a priority segment.

In June 2000, the *I–66 Southern Kentucky Corridor Scoping Study* (Pulaski-Laurel Counties) was completed. It developed an environmental footprint, gathered resource agency and public input, and identified areas of concern, as well as the potential benefits of such an undertaking within the Southern Kentucky Corridor.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held throughout the design process. In addition a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting with resource agencies will be planned for late spring 2002. Resource agencies will be notified 30 days prior to the meeting date.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed project and EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: April 22, 2002.

Evan J. Wisniewski,

Acting Kentucky Division Administrator.

[FR Doc. 02–10410 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Assessment; Pulaski County, KY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public of its intent to prepare an Environmental Assessment (EA) for a proposed highway project in the south-central portion of Kentucky, between the Louis B. Nunn Parkway (Cumberland

Parkway) at Fishing Creek to Ky 80 east of Somerset.

FOR FURTHER INFORMATION CONTACT: Evan J. Wisniewski, Project Development Team Leader, Federal Highway Administration, 330 West Broadway, Frankfort, Kentucky, 40601, (502) 223–6740, e-mail: *evan.wisniewski@fhwa.dot.gov;* or David Beattie, Project Manager, Kentucky Transportation Cabinet, District XX, P.O. Box 780, Somerset, Kentucky, 40502, (606) 677–4017, e-mail *david.beattie@mail.state.ky.us.*

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at *http://www.access.gpo.gov.nara.*

Background

The FHWA, in cooperation with the Kentucky Transportation Cabinet (KYTC), will prepare an Environmental Assessment to evaluate alternatives for a proposed highway project in the vicinity of Somerset, Kentucky. The proposed project is located in the south-central portion of Kentucky near and immediately north of Somerset in Pulaski County and would connect the Louis B. Nunn Parkway (Cumberland Parkway) at Fishing Creek to KY 80 east of Somerset.

As part of the National Environmental Policy Act (NEPA) process, FHWA will be preparing an EA to assess the social, economic, and environmental impacts of the proposed project. The EA will include a reasonable range of alternatives that will address the purpose and need of the project, as well as a no-build alternative. If the EA determines that an Environmental Impact Statement (EIS) is necessary for the proposed project, the information gained through the scoping process in this EA may be used as input to the scoping process for the development of that EIS. If an EIS is prepared in the future, additional written comments will still be considered at that time, after the filing of a Notice of Intent (NOI).

A Public Involvement Plan, including the development of a Citizens Advisory Council, has been established during the planning phase of this project and will facilitate public involvement throughout the project development process. The input of the resource agencies will be solicited throughout the life of this project. Throughout the development process, advance notice of the time and place of public meetings and/or hearings will be given in order to provide an opportunity for citizen attendance and comments.

The proposed project would service the Somerset area transportation needs by improving regional access, reducing existing and forecasted traffic congestion, and strengthening the regional highway network by improving connectivity to other major roads. This includes connecting the Louis B. Nunn (Cumberland) Parkway west of Somerset to KY 80 east of Somerset. While the project would serve the Somerset area, it could also link portions of the proposed Transamerica Transportation Corridor (I–66). This Transamerica Transportation Corridor included a ''Southern Kentucky Corridor'' centered on the cities of Pikeville, Jenkins, Hazard, London, Somerset, Columbia, Bowling Green, Hopkinsville, Benton and Paducah.

This I–66 Corridor was defined in an *Interstate 66 Feasibility Study*, and extends from the East Coast to the West Coast and generally is located between I–70 and I–40. This feasibility study focused on the feasibility of various alternative transportation concepts within that corridor. The report recognized that further analyzes could find that some individual segments of the Transamerica Transportation Corridor would be more feasible than others and would be more desirable from a state or regional perspective. The *Interstate 66 Feasibility Study* was funded through the 1991 U.S. Department of Transportation Appropriation Act.

The *Southern Kentucky Corridor, Economic Justification & Financial Feasibility Study (dated May, 1997)* followed the *Interstate 66 Feasibility Study*. Then in 2000, the *I–66 Southern Kentucky Corridor Scoping Study* (Pulaski-Laurel Counties) was completed. It developed an environmental footprint, gathered resource agency and public input, and identified areas of concern, as well as the potential benefits of such an undertaking within the Southern Kentucky Corridor. The Somerset Northern Bypass has been prioritized from study because of existing and future transportation needs in the Somerset area, including traffic congestion and regional access, and the linkage that it creates between existing facilities.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held throughout the design process. In addition a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EA will be available for public and agency review and comment prior to the public hearing. Formal scoping will be planned for late spring 2002.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EA should be directed to the FHWA at the address provided under the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: April 22, 2002.

Evan J. Wisniewski.

Acting Kentucky Division Administrator.

[FR Doc. 02–10409 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (collectively, the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

On January 10, 2002, the agencies published a notice in the **Federal Register** (67 FR 1405) requesting public comment on the extension, with revision, of the currently approved information collection titled ''Interagency Bank Merger Act Application'' and clarifications to the Comptroller's Corporate Manual. The comment period for this notice expired on March 11, 2002, and no comments were received. The agencies are now submitting requests to OMB for review and approval of the extension, with revision, of this information collection.

DATES: Comments must be submitted to the agencies and the OMB Desk Officer on or before May 29, 2002.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments should refer to the OMB control number(s) and will be shared among the agencies.

OCC: Written comments should be submitted to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Public Information Room, Mailstop 1–5, Attention: 1557–0014 (BMA), Washington, DC 20219. Due to recent disruptions in the OCC's mail service, commenters are encouraged to submit comments by fax or by electronic mail. Comments may be sent by fax to (202) 874–4448, or by electronic mail to regs.comments@occ.treas.gov. Comments will be available for inspection and photocopying at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. Appointments for inspection of comments may be made by calling (202) 874–5043.

Board: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov,* or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Tamara R. Manly, Management Analyst (Regulatory Analysis), Office of Executive Secretary, Room F–4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to ''Interagency Bank Merger Act Application.'' Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: *comments@fdic.gov].* Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

OTS: Written comments should be sent to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: 1550–0016, FAX Number (202) 906–6518, or e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at www.ots.treas.gov. In addition, interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from:

OCC: Jessie Dunaway, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. For subject matter information, you may contact Cheryl Martin at (202) 874–4614, Licensing Policy, and Systems, Licensing Department, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Mary M. West, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Capria Mitchell (202) 872–4984, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OTS: Sally W. Watts, OTS Clearance Officer, (202) 906–7380; Frances C. Augello, Senior Counsel, Business Transactions Division, (202) 906–6151; Patricia D. Goings, Regulatory Analyst, Examination Policy, (202) 906–5668; or Damon C. Zaylor, Regulatory Analyst, Examination Policy, (202) 906–6787, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Proposal To Request Approval From OMB of the Extension for Three Years, With Revision, of the Following Currently Approved Collection of Information

Report Title: Interagency Bank Merger Act Application.

OCC's Title: Comptroller's Corporate Manual (Manual). The specific portions of the Manual covered by this notice are those that pertain to ''The Interagency Bank Merger Act'' application located in the Business Combinations booklet of the Manual and various portions of the booklet to which the OCC is making technical and clarifying changes.

OMB Numbers:
OCC: 1557–0014.
Board: 7100–0171.
FDIC: 3064–0015.
OTS: 1550–0016.

Form Numbers:
OCC: None.
Board: FR 2070.
FDIC: 6220/01 and 6220/07.
OTS: 1639.

Affected Public: Individuals or households; Businesses or other for-profit.

Type of Review: Revision of a currently approved collection.

Estimated Number of Respondents:

OCC: Nonaffiliate—60; Affiliate—210.
Board: Nonaffiliate—57; Affiliate—79.
FDIC: Nonaffiliate—200; Affiliate—150.
OTS: Nonaffiliate—16; Affiliate—0.
Frequency of Response: On occasion.
Estimated Annual Burden Hours per Response:
OCC: Nonaffiliate—30; Affiliate—18.
Board: Nonaffiliate—30; Affiliate—18.
FDIC: Nonaffiliate—30; Affiliate—18.
OTS: Nonaffiliate—30; Affiliate—18.
Estimated Total Annual Burden Hours:
OCC: Nonaffiliate—1,800; Affiliate—3,780. Total: 5,580 burden hours.
Board: Nonaffiliate—1,710; Affiliate—1,422. Total: 3,132 burden hours.
FDIC: Nonaffiliate—6,000; Affiliate—2,700. Total: 8,700 burden hours.
OTS: Nonaffiliate—480; Affiliate—0. Total: 480 burden hours.
General Description of Report: This information collection is mandatory. 12 U.S.C. 1828(c) (OCC, FDIC, and OTS), and 12 U.S.C. 321, 1828(c), and 4804 (Board). Except for select sensitive items, this information collection is not given confidential treatment. Small businesses, that is, small institutions, are affected.

Abstract: This submission covers a revision to the agencies' merger application form for both affiliated and nonaffiliated institutions. The form's title is the Interagency Bank Merger Act Application. The agencies need the information to ensure that the proposed transactions are permissible under law and regulation and are consistent with safe and sound banking practices. The agencies are required, under the Bank Merger Act, to consider financial and managerial resources, future prospects, convenience and needs of the community, community reinvestment, and competition.

Some agencies collect limited supplemental information in certain cases. For example, the OCC and OTS collect information regarding CRA commitments, the OCC collects the identity and the activity of each subsidiary to be acquired, the Federal Reserve collects information on debt servicing from certain institutions, and the FDIC requires additional information on the competitive impact of proposed mergers.

Current Actions: On January 10, 2002, the agencies published in the **Federal Register** (67 FR 1405), a notice on the proposed revisions to this information collection. The comment period expired on March 11, 2002. The agencies received no public comments and are now submitting requests to OMB for approval of the extension, with revision, of this information collection, as proposed.

Section 307(c) of the Gramm-Leach-Bliley Act (GLBA) requires the appropriate agency to consult with the appropriate state insurance regulator prior to making any determination relating to the initial affiliation of, or the continuing affiliation of, a depository institution with a company engaged in insurance activities. As a result, the agencies propose to add an item to the form to collect information regarding the name of an affiliated insurance company, a description of its insurance activities, and the name of the state in which the company is domiciled or in which it has a resident license. Additionally, the General Instructions contain technical corrections to make them uniform with the proposed revisions to the ''Interagency Charter and Federal Deposit Insurance Application'' form.

Further, the OCC is making a change to its Business Combinations booklet of the Manual by adding the interagency application form and providing updated information about filing for a merger. These changes are not material and are technical in nature. These changes are an administrative adjustment, and do not change, in any way, the requirements on national banks.

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: April 16, 2002.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, April 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

Dated at Washington, DC, this 19th day of April, 2002.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

Dated: April 22, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division, Office of Thrift Supervision.

[FR Doc. 02–10395 Filed 4–26–02; 8:45 am]

BILLING CODES 4810–33–P, 6210–01–P, 6744–01–P, and 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0014]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine enrollment conditions and to certify pursuit and attendance for rehabilitation and special restorative or specialized vocational training program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 28, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue,

NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0576'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Authorization and Certification of Entrance or Reentrance into Rehabilitation and Certification of Status, VA Form 28–1905.

OMB Control Number: 2900–0014.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected on VA Form 28–1905 ensures that veterans or other eligible persons do not receive benefits for periods when they did not actually begin to participate in any rehabilitation or special restorative or specialized vocational training program. VA uses the information to establish the correct beginning and ending dates for the education, training, or other rehabilitation services and the correct rates for subsistence allowance payments.

Affected Public: Not-for-profit institutions, Individuals or households, Business or other for-profit, farms, and State, Local or Tribal Government.

Estimated Annual Burden: 2,917 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 35,000.

Dated: April 18, 2002.

By direction of the Secretary:

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–10422 Filed 4–26–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to conduct a study to determine whether there was an increased prevalence of illnesses among veterans due to service in the Gulf War.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 28, 2002.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov.* Please refer to ''OMB Control No. 2900–New'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff (202) 273–8310 or FAX (202) 273–9381. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501—3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on:

(1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Longitudinal Health Study of Gulf War Veterans, VA Form 10–21055(NR).

OMB Control Number: 2900–New.

Type of Review: New collection.

Abstract: The Department of Veterans Affairs has designed a longitudinal study of Gulf War veterans to evaluate the health of veterans ten years after the Gulf War. The study will allow VA to monitor the health of veterans over time to determine the extent of the health problems among Gulf War veterans and whether health status of Gulf War veterans is better or worse than the health of veterans who were not deployed to the Gulf.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,966 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Every 3 years.

Estimated Number of Respondents: 7,933.

Dated: April 18, 2002.

By direction of the Secretary:

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–10423 Filed 4–26–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

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 is scheduled for Wednesday, May 8, 2002, beginning at 9:00 a.m. and adjourning at 4 p.m. and Thursday, May 9, 2002, beginning at 8:30 a.m. and adjourning at 11:30 a.m. The May 8 session will be held in the Horizon Ballroom of the Ronald Reagan Building International

Trade Center, 1300 Pennsylvania Avenue, NW, Washington, DC. The May 9 session will be held in Room 230, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC. Both sessions are open to the general 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 Department of Defense (DoD) military retirees who are also eligible for benefits from VA, through better coordination of the activities of the two departments;

(b) Identify opportunities to remove barriers that impede VA and DoD coordination, including budgeting processes, timely billing, cost accounting, information technology, and reimbursement; and

(c) Identify opportunities through partnership between VA and DoD, to maximize the use of resources and infrastructures, including buildings, information technology and data sharing systems, procurement of supplies, equipment and services.

On the morning of May 8, the Vision Work Group and the Information Management/Information Technology Work Group will brief the Committee. During the afternoon session, the Leadership Work Group, Benefits Work Group and Acquisition and Procurement Work Group will brief the Committee. On the morning of May 9, the Pharmaceuticals Work Group, Facilities Work Group, and Resources and Budgeting Work Group will brief the Committee.

Interested parties can provide written comments to Mr. Dan Amon, Communications Director, President's Task Force to Improve Health Care Delivery to Our Nation's Veterans, 1401 Wilson Boulevard, 4th Floor, Arlington, Virginia 22209.

Dated: April 22, 2002.

By Direction of the Secretary:

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–10421 Filed 4–26–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be held May 15–16, 2002, at VA Headquarters, Room 230, 810 Vermont Avenue, NW., Washington, DC. The meeting will convene at 8 a.m. on both days and adjourn at 4 p.m. on May 15 and 12 noon on May 16. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary on VA's prosthetic programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also advises the Secretary on special disability programs which are defined as any program administered by the Department to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

The morning of May 15, the Committee will have briefings by the Acting Chief Consultant, VHA Employee Education Service or designee, and the Director, Capital Asset Realignment for Enhanced Services Program or designee. In the afternoon, the Committee will be briefed by each of the four National program Directors of VA's special disability programs, i.e. spinal cord injury, blind rehabilitation, prosthetics, audiology and speech pathology. On the morning of May 16, the Committee will be briefed by the Acting Chief Consultant, Rehabilitation Strategic Healthcare Group and consider a report on Emergency Preparedness.

No time will be allocated for receiving oral presentations from the public. However, members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Ms. Cynthia Wade, Program Analyst, at Department of Veterans Affairs, Veterans Health Administration, Patient Care Services, Rehabilitation Strategic Healthcare Group (117), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Ms. Wade, at (202) 273–8485.

Dated: April 22, 2002.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–10420 Filed 4–26–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Veterans' Workforce Investment Program

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Notice of availability of funds and Solicitation for Grant Applications (SGA) for Veterans' Workforce Investment Program (VWIP), Section 168, Program Year 2002 SGA (02–08).

SUMMARY: All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service (VETS), announces a grant competition for Veterans' Workforce Investment Program (VWIP), Section 168, Program Year 2002 competitive grants. These grants will assist eligible veterans who: have service-connected disabilities; served on active duty in the armed forces during a war, campaign or expedition for which a campaign badge was authorized; are recently separated veterans; and veterans with significant barriers to employment, by providing training, employment and supportive service assistance in areas of high demand occupations.

Under this solicitation, VETS anticipates that up to $6,500,000 will be available for grant awards in Program Year (PY) 2002 and expects to award up to sixteen grants. Only one application will be accepted from each State's Governor. The VWIP programs are designed to be flexible in addressing the universal as well as local or regional problems barring veterans from the workforce. The program in PY 2002 will continue to strengthen the provision of comprehensive services through a case management approach, the attainment of supportive service resources for veterans entering the labor force, and strategies for employment and retention.

This notice describes the background, application process, description of program activities, evaluation criteria, and reporting requirements for this SGA. The information and forms contained in the Supplementary Information Section constitute the official application package. All necessary information and forms needed to apply for grant funding are included.

Forms or Amendments: If another copy of a Standard form is needed, go online to *http://www.nara.gov.*

To receive amendments to this Solicitation (Please reference SGA 02–08), *all applicants must register their*

name and address with the Grant Officer at the following address: U. S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

Closing Date: Applications are to be submitted, including those hand delivered, to the address below by no later than 4:45 p.m., Eastern Standard Time, May 29, 2002.

ADDRESSES: Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 02–08, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570, prior to the closing deadline. [This is not a toll-free number]

SUPPLEMENTARY INFORMATION:

Veterans' Workforce Investment Program, Program Year 2002—Veterans' Program Competitive Grants Solicitation

I. Purpose

The U.S. Department of Labor (DOL) VETS is requesting grant applications that will provide employment and training services for veterans who meet the eligibility criteria set forth in the VWIP, Section 168 of the Workforce Investment Act, Pub.L. 105–220 (WIA). These instructions contain general program information, requirements, and forms to apply for funds to operate a veterans' employment and training program in areas of high demand occupations. Accordingly, the Assistant Secretary for Veterans' Employment and Training (ASVET) is making up to $6,500,000 of the funds available to award grants for unique and innovative employment and training programs.

Programs should maximize the eligible veterans' military skills, training, and experience by effectively exploring the transitional or transferable occupational opportunities of the geographical area in which the grant would be awarded.

II. Background

Section 168 of the Veterans' Workforce Investment Program provides that the Secretary will conduct, directly or through grants or contracts, such employment and training programs as the Secretary deems appropriate to assist veterans who have service-connected disabilities, veterans who served on active duty in the armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized, recently separated veterans, and those veterans with significant barriers to employment, to obtain gainful employment.

III. Application Process

A. Eligible Applicants

Applications for funds will be accepted from State and local workforce investment boards, local public agencies, and private nonprofit organizations, including faith-based and community organizations, which have familiarity with the area and populations to be served and can administer an effective program. Eligible applicants will fall into one of the following categories:

1. State and Local Workforce Investment Boards (WIBs), as defined in Sections 111 and 117 of the Workforce Investment Act, are eligible applicants.

2. Local public agencies, meaning any public agency of a general purpose political subdivision of a State that has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties). A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction.

Applicants are encouraged to utilize, through sub-grants, experienced public agencies, private nonprofit, private businesses and faith-based and community organizations that have an understanding of unemployment and the barriers to employment unique to veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

3. Also eligible to apply are private nonprofit organizations that have operated an employment and training program for eligible veterans and have proven a capacity to manage grants and have or will provide the necessary linkages with other service providers. *Entities described in Section 501(c)(4) of the Internal Revenue Codes that engage in lobbying activities are not eligible to receive funds under this announcement* as Section 18 of the Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities.

B. Funding Levels

The total funds anticipated for this solicitation is $6,500,000. It is anticipated that up to sixteen awards will be made under this solicitation. Individual Awards will not exceed $850,000. The Federal Government reserves the right to negotiate the amounts to be awarded under this competition. Applicant requests exceeding the $850,000 will be considered non-responsive.

C. Period of Performance

The VWIP funds for this competition are for a maximum period of one year with a second year funding option. The period of performance will be for twelve months from the date of the award. VETS expects that successful applicants will commence program operations under this solicitation on July 1, 2002. Program Funds must be expended by June 30, 2003, not including the 6-month follow up period referred to in the budget narrative.

1. First-Year Funding

The anticipated period of program performance is for one year beginning July 1, 2002 and ending June 30, 2003. (All program performance and budget forms should reflect this period to cover four (4) program year quarters). No applicant shall begin its proposed program operations before the grant award. Due to the competitive nature of the VWIP, the grantee will be held to the performance and funding goals in the grant award. However, cost extensions or duration modifications will be allowed during the first year, if the grantee does not receive second year funding, at USDOL's VETS sole discretion. Furthermore, modifications will be allowed that increase goals.

2. Second-Year Funding

Subject to the availability of sufficient funds for PY 2003, funding beyond PY 2002 may be available and may be requested through a grant modification request, provided the applicant:

a. Submitted all program and fiscal reports by the established due date and that they may be verified for accuracy.

b. Complied with all applicable terms.

c. Achieved by the end of the third quarter, at least 75% of the first year total goals for Federal expenditures, enrollments and core training (all training added together), or 85% of total

goals for the year if planned activity is *NOT* evenly distributed in each quarter.

All instructions for modifications and announcement of funding availability will be issued at a later date.

D. Requirements of Submission

A cover letter, an original proposal, and two (2) copies of the proposal must be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. To aid with the review of applications, USDOL also encourages Applicants to submit one additional paper copy of the application (four total). Applicants who do not provide additional copies *will not* be penalized. The proposal must consist of two (2) separate and distinct parts: (1) one completed, blue ink-signed original SF 424 grant application with two (2) copies of the Technical Proposal; and two (2) copies of the Cost Proposal.

E. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 p.m. EST, May 29, 2002 will *not* be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail no later than the fifth calendar day before May 29, 2002;

2. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 P.M. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to May 29, 2002; and

3. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date will be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however, the applicant bears the responsibility of timely submission. All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline, as you assume the risk for ensuring a timely submission; that is, if, because of these mail problems, the Department does not receive an application or receives it too late to give it proper consideration, even if it was timely mailed, the Department is not required to consider the application.

F. Proposal Content

The proposal will consist of two (2) separate and distinct parts, a Technical Proposal and a Cost Proposal:

Part 1—The Technical Proposal will consist of a narrative proposal that demonstrates the applicant's knowledge of the need for this particular grant program; an understanding of the services and activities proposed to obtain successful outcomes for the veterans served; and the capability to accomplish the expected outcomes of the proposed project design. The technical proposal will consist of a narrative not to exceed fifteen (15) pages double-spaced—font size no less than 11pt., and typewritten on one side of the paper only. [The applicant must complete the forms, *i.e.*, Quarterly Technical Performance Goals chart provided in the SGA.]

1. *The proposal should include an outreach component.* It is recommended that the applicants coordinate these activities through veteran service providers and community-based faith-based organizations who have experience working and serving the veteran population. This requirement can be modified to allow the project to utilize veterans in other positions where there is direct client contact if extensive outreach such as intake, counseling, peer coaching, and follow up is not needed. This requirement applies to projects funded under this solicitation.

2. *Projects will be required to show linkages with other programs and services which provide support to eligible veterans.* Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVER) in the jurisdiction is strongly encouraged.

3. *Projects will be ''employment focused''.* The services provided will be directed toward increasing the employability of veterans through training or arranging for the provision of services which will enable them to work; and (b) matching veterans with potential employers.

G. Required Features

There are five program activities that all applications must contain in order to be found technically acceptable under this SGA. These activities are:

—Pre-Enrollment Assessments;
—Employment Development Plans for all clients;
—Core Training for eighty percent (80%) or more of the clients; (training does not have to be received from an eligible provider under WIA. (*This requirement is only for formula grants covered under WIA.*)
—Case Management
—Job placement and job retention follow up (at 90 and 180 days) after individual enters employment.

The following format is strongly recommended:

1. Need for the project: The applicant must identify the geographical area to be served and provide an estimate of the number of veterans and their needs, poverty and unemployment rates in the area, the gaps in the local community infrastructure that contribute to employment and other employment barriers faced by the targeted veterans and how the project would respond to these needs. Also, include the outlook for job opportunities in the service area.

2. Approach or strategy to provide training, employment and job retention: The applicant must be responsive to the Rating Criteria contained in Section VIII, and address all of the rating factors as thoroughly as possible in the narrative. The applicant must: (a) Provide the type(s) of training to be offered, the length of the training, the training curriculum and describe how the training will enhance the eligible veterans' employment opportunities within that geographical area; (b) describe the specific supportive services and employment and training services to be provided under this grant and the sequence or flow of such services—flow charts may be provided; (c) provide a plan for follow up to address retention after 90 and 180 days with participants who entered employment. (See discussion on results in Section X. D.,

2.); and (d) include the required chart of proposed performance goals and planned expenditures listed in Appendix D.

3. Linkages with other providers of employment and training services to veterans: The applicant must: describe the linkages this program will have with other providers of services to veterans outside of the grant; include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP), the Local Veterans' Employment Representative (LVER) program, and programs operated under the Workforce Investment Act; and list the types of services provided by each. Note the type of agreement in place, if applicable. Linkages with the workforce development system [including State Employment Security Agencies (State Workforce Agencies)] must be delineated. Describe any linkages with any other resources and/or other programs for veterans. Indicate how the program will be coordinated with any efforts for veterans that are conducted by agencies in the community.

4. Proposed supportive service strategy for veterans: Describe how supportive or ancillary service resources for veterans will be obtained and used. If resources are provided by other sources or linkages, such as Federal, State, local, or faith-based and community programs, the applicant must fully explain the use of these resources and why they are necessary.

5. Organization's capability to provide required program activities: The applicant's relevant current or prior experience in operating employment and training programs should be clearly described. The applicant must provide information showing outcomes of all past programs in terms of enrollments and placements. An applicant which has operated a Veterans' program, JTPA IV–C program, or VWIP program, must include final or most recent technical performance reports. For those applicants with no prior VWIP grant experience, a summary narrative of program experience and employment and training performance outcomes is required. The applicant must also provide evidence of key staff capability. (This information is subject to verification by the government. Veterans' Employment and Training Service reserves the right to have a representative within each State provide programmatic and fiscal information about applicants and forward those findings to the VETS National Office during the review of the applications.)

Note: Resumes, charts, and standard forms, transmittal letters, letters of support are not included in the page count. [If provided, include these documents as attachments to the technical proposal.]

Part 2—The Cost Proposal must contain: (1) The Standard Form (SF) 424, ''Application for Federal Assistance'; (2) the Standard Form (SF) 424A ''Budget Information Sheet'' in Appendix B; and (3) a detailed cost break out of each line item on the Budget Information Sheet. Please label this page or pages the ''Budget Narrative'' and ensure that costs reported on the SF 424A correspond accurately with the Budget Narrative.

In addition to the cost proposal, the applicant must include the Assurance and Certification signature page, Appendix C, and copies of all required forms with instructions for completion provided as appendices to this SGA.

The *Catalog of Federal Domestic Assistance* number for this program is 17.802. It must be entered on the SF 424, Block 10.

IV. Budget Narrative Information

As an attachment to the Budget Information Sheet (SF 424A), the applicant must provide, at a minimum, and on a separate sheet(s), the following information:

A. A breakout of all personnel costs by position, title, salary rates, and percent of time of each position to be devoted to the proposed project (including sub-grantees);

B. An explanation and breakout of extraordinary fringe benefit rates and associated charges (i.e., rates exceeding 35% of salaries and wages);

C. An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, sub-grants/contracts, and any other costs. The applicant must include costs of any required travel described in this Solicitation. Mileage charges must not exceed 36.5 cents per mile;

D. A plan, which includes all associated costs, for retaining participant information pertinent to a longitudinal follow up survey, six months after the program performance period ends;

E. Description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, and personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

F. Identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind services. If resources/matching funds and/or the value of in-kind contributions are made available please show in Section B of the Budget Information Sheet.

V. Participant Eligibility

Campaign veterans, veterans who have service-connected disabilities, veterans who are recently separated, or veterans with significant barriers to employment are eligible for participation under this program.

A. The term ''veteran'' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [Reference 38 U.S.C. 4101(2)]

B. The term ''Campaign veteran''—refers to any veteran who served on active duty in the United States armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized. A list of the wars, campaigns and expeditions can be found at the Office of Personnel Management Web site at *http://www.opm.gov/veterans/html/vgmedal2.htm.*

C. The term ''service-connected disabled''—refers to (1) a veteran who is entitled to compensation under laws administered by the Department of Veterans' Affairs (DVA), or (2) an individual who was discharged or released from active duty because of a service-connected disability. (29 U.S.C. 1503(27)(B)).

D. The term ''recently-separated veteran''—refers to any veteran who applies for participation in a VWIP funded activity within 48 months after separation from military service. (29 U.S.C. 2801 (49))

VI. Project Summary

A. Program Concept and Emphasis

The grants awarded under this SGA are intended to address two objectives: (1) To provide services to assist in reintegrating eligible veterans into meaningful employment within the labor force; and (2) to stimulate the development of effective service delivery systems that will address the complex problems facing eligible veterans.

These programs are designed to be flexible in addressing the universal as well as local or regional problems barring eligible veterans from the workforce. The program in FY 2002 will continue to strengthen the development of effective service delivery systems, to provide comprehensive services through a case management approach that will address the complex problems facing eligible veterans trying to transition into

gainful employment, and improve strategies for employment and retention.

In addition to the mandatory activities, proposed programs should include, if applicable, optional program activities, such as ancillary and/or support services, to assure that participants are placed in unsubsidized employment that meets their ''minimum economic need.'' Both categories of program activities are more fully described below.

1. Mandatory Program Activities

a. Pre-Enrollment Assessments. The utilization of Disabled Veterans' Outreach Program (DVOP) and Local Veterans' Employment Representatives (LVER) staff for pre-enrollment assessments is strongly encouraged.

A definition of pre-enrollment assessment can be found in the Glossary of Terms. Costs are allowed for pre-enrollment assessments that enable grantees to determine the employability needs of applicants by conducting meaningful evaluations of applicant skills and barriers. Grantees are then able to refer those applicants who may not be appropriate for the services of the proposed program to other service providers. The assessment of applicants prior to enrollment is an allowable cost to VWIP provided it has been determined that the assessed applicants meet the eligibility criteria for VWIP discussed earlier in this SGA. In the Program Design, the grant applicant must identify the means of pre-enrollment assessment that it intends to use and the purpose for the information to be derived from those assessments.

b. The Employment Development Plan (EDP). The utilization of Disabled Veterans' Outreach Program (DVOP) and Local Veterans' Employment Representatives (LVER) staff in the EDP process is strongly encouraged.

A definition of Employment Development Plan (EDP) can be found in the Glossary of Terms.

The implementation of an EDP is required for all veterans enrolled in programs supported by VWIP resources. A copy of an EDP is maintained in each participant's file. The EDP must document a summary of the assessments conducted to ascertain the abilities, barriers and needs of the participant. At a minimum, the EDP must substantiate the participant's minimum income needs, identify barriers and skill deficiencies, and describe the services needed and the competencies to be achieved by the participant as a result of program participation. The applicant must also include a description of their proposed EDP process in their application.

c. Core Training Activities. A definition of Core Training Activities can be found in the Glossary of Terms. It refers to any training program that leads to the development of job skills for the participant. At least 80% of all participants who are enrolled in VWIP must receive some form of core training. The Program Design narrative must identify the core training components to be employed in the applicant's program, and these components must agree in scope with the definitions found in the Glossary of Terms. Core training components proposed by the applicant that do not fit the glossary terms or definitions must be adequately described and justified in the Program Design narrative. Core training activities described in this section must include, but are not limited to, the following:

i. Classroom training;
ii. On-the-job training;
iii. Remedial education;
iv. Literacy and bilingual training;
v. Institutional skills training;
vi. Occupational skills training;
vii. On-site industry-specific training;
viii. Customized training;
ix. Apprenticeship training; and
x. Upgrading and retraining.

Definitions of these core training activities are found in the Glossary of Terms.

d. Job Placement and Follow up Services.

The utilization of Disabled Veterans' Outreach Program (DVOP) and Local Veterans' Employment Representatives (LVER) staff for job placement and follow up services is strongly encouraged.

A definition of job placement and follow up services can also be found in the Glossary of Terms. The ultimate objective of VWIP services is to place each eligible veteran into meaningful, gainful employment that allows the participant to become economically self-sufficient. The applicants must describe in the Program Design how job placements will occur after core training activities and/or after job development or referral efforts are initiated. Applicants are required to include their proposed program to track a participant's progress and status after initial placement. Applicants must describe in the Program Design the follow up activities that participants will be provided. The description must include the nature of those services. Please note that follow up is required 90 and 180 days after entering employment.

B. Scope of Program Design

The Program Design must provide or arrange for the following:

1. Projects must show linkages with other programs and services which provide support to veterans, such as faith-based and community-based organizations. Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVER) is strongly encouraged.

2. Projects must be ''employment-focused.'' The services provided will be directed toward increasing the employability of veterans by providing training that will increase employment opportunities for the participants.

Outreach should, to the degree practical, be provided at Veterans' Job Fairs, Transition Assistance Centers, or Family Service Centers at military installations, and other programs or events frequented by veterans. Coordination is encouraged with veterans' services programs and organizations such as:

—State Workforce Agencies, the newly instituted workforce development system's One-Stop Centers, or other VWIP Veterans' Employment Programs;
—Department of Veterans' Affairs (DVA) services, including its education programs; and
—Veterans' service organizations, such as The American Legion, Disabled American Veterans (DAV), Veterans of Foreign Wars (VFW), Vietnam Veterans of America (VVA), and American Veterans (AMVETS).

C. Results-Oriented Model

No model is mandatory, but the applicant must design a program that is responsive to local needs, and will carry out the objectives of the program to successfully reintegrate veterans into the workforce.

With the advent of the Government Performance and Results Act (GPRA), Congress and the public are looking for program results rather than just program processes. Although entering employment is a viable outcome, it will be necessary to measure results over a longer term to determine the success of the program. The following program discussion must be considered in a results-oriented model. The first phase of activity must consist of the level of outreach that is necessary to reach eligible veterans. Such outreach will also include establishing contact with other agencies that encounter veterans. Once the eligible participants have been identified, an assessment must be made of their abilities, interests and needs. In some cases, these participants may require referrals to services such as drug or alcohol treatment or a temporary shelter before they can be enrolled into

core training. When the individual is stabilized, the assessment should focus on the employability of the individual and their enrollment into the program. A determination must be made as to whether the participant would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, job development, or entry into classroom or on-the-job training. Such services must also be noted in an Employability Development Plan so successful completion of the plan can be monitored by the staff. Entry into full-time employment or a specific job training program must follow, in keeping with the objective of the program, which is to bring the participant closer to self-sufficiency. Supportive Services may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process. Wherever possible, DVOP and LVER staff need to be utilized for job development and placement activities for veterans who are ready to enter employment or who are in need of intensive case management services. Many of these staff members have received training in case management at the National Veterans' Training Institute and have a priority of focus in assisting those most disadvantaged in the labor market. VETS requires working hand-in-hand with DVOP/LVER staff to achieve economies of resources.

The following program discussion emphasizes that follow up is an integral program component. *Follow up to determine whether the veteran is in the same or similar job at the 90-day and 180-day period after entering employment is required.* It is important that the applicant maintain contact with the veterans after placement to assure that employment related problems are addressed. *The 90-day and 180-day follow up is fundamental to assessing the results of the program success.* Grantees must be careful to budget for this activity so that follow up will occur for those placed at or near the end of the grant period. Such results will be reported in the final technical performance report.

Retention of records will be referred to in the Special Grant Provisions provided at the time of award.

VII. Related Program Development Activities

Community Awareness Activities. In order to promote linkages between the program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by the grantees have been an effective means of sharing information and revealing the availability of other services. They are encouraged but are not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, outstation staff, develop individual service contracts, and involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

1. Providers of hands-on services to veterans to make veterans more fully aware of the services offered, job-ready and placed in jobs.
2. Federal, State and local services such as the Department of Veterans' Affairs (DVA), State Workforce Agencies and their local Job Service Offices and One-Stop Centers (which integrate WIA, labor exchange, and other employment and social services) to familiarize them with the nature and needs of veterans.
3. Civic and private sector groups, and especially veterans' service, faith-based and community organizations, to describe veterans and their needs.

VIII. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify applicants as potential grantees. Although DOL reserves the right to award on the basis of the initial proposal submissions, DOL may establish a competitive range based upon the proposal evaluation for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. DOL reserves the right to ask for clarification or hold discussions, but is not obligated to do so. DOL further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, administrative costs, program costs e.g., cost per enrollment and placement, demonstration models, and geographical service areas. The Grant Officer's determination for award under SGA 02–03 is the final agency action. The submission of the same proposal from any prior year competition does not guarantee an award under this Solicitation.

Panel Review Criteria

1. Need for the Project: 15 Points

The applicant must document the extent of need for this project, as demonstrated by: (1) The potential number or concentration of veterans in the proposed project area relative to other similar areas of jurisdiction; (2) the rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (3) the extent of gaps in the local infrastructure to effectively address the employment barriers which characterize the target population.

2. Overall Strategy To Increase Employment and Retention: 40 Points

The application must include a description of the proposed approach to providing comprehensive employment services and training, including job development, employer commitments to hire, placement, and post-placement follow up services. The applicant must address its intent to target occupations in expanding industries, rather than on declining industries. The supportive services to be provided as part of the strategy of promoting job readiness and job retention must be indicated. The applicant must identify the local human resources and sources of training to be used for participants. A description of the relationship, if any, with other employment and training programs such as State Workforce Agencies (DVOP and LVER Programs), Homeless Veterans' Reintegration Projects (HVRP), other WIA programs, and Workforce Investment or Development Boards or entities where in place, must be presented. Applicants must indicate how the activities will be tailored or responsive to the needs of veterans. A participant flow chart may be used to show the sequence and mix of services.

Note: The applicant must complete the chart of proposed program outcomes to include participants served, placements/entered employments and job retention. (See Appendix D) Of the 40 points possible in the strategy to increase employment and retention, 10 points will be awarded to grant proposals that clearly plan on a six month employment retention rate of 50 percent, or 15 points will be awarded to proposals that show a six month employment retention rate of 70 percent.

3. Quality and Extent of Linkages With Other Providers of Services to the Veterans: 10 Points

The application must provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the veterans in the local community and/or on the reservation and outside of the grant area. For each service, the applicant must specify who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. [Describe, to the extent possible, how the project would respond to the needs of the veterans and any linkages to DVA programs or resources to benefit the proposed program.]

4. Demonstrated Capability in Providing Required Program Services: 20 Points

The applicant must describe its relevant prior experience in operating employment and training programs and providing services to participants similar to those proposed under this solicitation. Specific outcomes achieved by the applicant must be described in terms of clients placed in jobs, etc. [The applicant must also address its capacity for timely startup of the program.] The applicant should delineate its staff capability and ability to manage the operational aspects of a grant program, including a recent (within the last 12 months) financial statement or audit if available. Final or most recent technical reports for other relevant programs must be submitted if applicable. Because prior grant experience is not a requirement for this grant, some applicants may not have any technical reports to submit.

5. Quality of Overall Employment and Training Strategy: 15 Points

The application must demonstrate how the applicant proposes to meet the employment and training, and supportive services needs of veterans in the program who will be entering the labor force. This discussion must specify the provisions made to access transportation, child care, temporary, transitional, and permanent housing for participants through community resources, HUD, lease, WIA, or other means. Grant funds cannot be used to purchase housing or vehicles. Applicants can expect that the cost proposal will be reviewed for allowability, proper allocation of costs, and reasonableness of the placement and enrollment costs.

IX. Post Award Conference

A post-award conference will be held for those grantees awarded PY 2002 VWIP funds from the competition. It is expected to be held in August or September 2002. Up to two grantee representatives must be present; a fiscal and a program representative is recommended. The site of the Post-Award conference has not yet been determined, for planning and budgeting purposes, please use Washington, DC as the conference location. The conference will focus on providing information and assistance on reporting, recordkeeping, and grant requirements, and also include best practices from past projects.

X. Reporting Requirements

The grantee will submit the reports and documents listed below:

A. Financial Reports

The grantee will report outlays, program income, and other financial information on a quarterly basis using SF 269A, Financial Status Report, Short Form. This form will cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET), whose address will be provided, no later than 30 days after the ending date of each Federal fiscal quarter (i.e., October 30, January 30, April 30, and July 30) during the grant period.

B. Program Reports

Grantees will submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter to the DVET which contains the following:

1. A comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts; and
2. An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) Identification of corrective action which will be taken to meet the planned goals, and (ii) a timetable for accomplishment of the corrective action.

C. 90 Days Report Package

The grantee will submit, no later than 90 days after the grant performance period ends, a report containing the following:

1. Interim Financial Status Report (SF–269A) (copy to be provided following grant awards).
2. Interim Technical Performance Report—(Program Goals).
3. Interim Narrative Report identifying—(a) major successes of the program; (b) obstacles encountered and actions taken (if any) to overcome such obstacles; (c) the total combined number of veterans placed in employment during the entire grant period; (d) the number of veterans still employed at the end of the grant period; (e) an explanation regarding why those veterans placed during the grant period, but not employed at the end of the grant period, are not so employed; and (f) any recommendations to improve the program.

D. Six (6) Month Final Report

No later than 210 days after the grant performance period ends, the grantee will submit a follow up report containing the following:

1. Final Financial Status Report (SF–269A).
2. Final Narrative Report identifying—(a) the total combined (directed/assisted) numbers of veterans placed during the entire grant period; (b) the number of veterans still employed during follow up; (c) are the veterans still employed at the same or similar job, if not what is the reason(s); (d) was the training received, applicable to jobs held; (e) wages at placement and during follow up period; (f) an explanation of why those veterans placed during the grant period, but not employed at the end of the follow up period, are not so employed; and (g) any recommendations to improving the program.

XI. Administration Provisions

A. Limitation on Administrative and Indirect Costs

1. Direct Costs for administration, may not exceed 10 percent of the total amount of the grant.
2. Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application.
3. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.
4. Rates traceable and trackable through the State Workforce Agency's Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in grants to State Workforce Agencies.

B. Allowable Costs

Determinations of allowable costs will be made in accordance with the following applicable Federal cost principles:

1. State and local government—OMB Circular A–87
2. Educational institutions—OMB Circular A–21
3. Nonprofit organizations—OMB Circular A–122

C. Administrative Standards and Provisions

Except as specifically provided, DOL acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require and an entity's procurement procedures must require that all procurement transactions will be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

All grants will be subject to the following administrative standards and provisions:

1. 29 CFR Part 93—Lobbying.
2. 29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations, and with Commercial Organizations, etc.
3. 29 CFR Part 96—Federal Standards for Audit of Federally-funded Grants, Contracts and Agreements. This rule implements, for State and local governments and Indian tribes that receive Federal Assistance from the DOL, Office of Management and Budget (OMB) Circular A–128 ''Audits of State and Local Governments'' which was issued pursuant to the Single Audit Act of 1984, 31 U.S.C. Sec. 7501–7507. It also consolidates the audit requirements currently contained throughout the DOL regulations.
4. 29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
5. 29 CFR Part 98—Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)
6. 29 CFR Part 99—Audit of States, Local Governments, and Nonprofit Organization.
7. Section 168(b) of WIA—Administration of Programs. Please note that sections 181–195 also apply.
8. 29 CFR Parts 37—the WIA non-discrimination regulations. These rules implement, for recipients of federal assistance, provisions of nondiscrimination on the basis of race, color, national origin, and disabled condition, respectively.
9. Appeals from non-designation will be handled under 20 CFR Part 667, Subpart H.

Signed at Washington, DC, this 23rd day of April, 2002

Lawrence J. Kuss,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424
Appendix B: Budget Information Sheet, SF 424A
Appendix C: Assurances and Certifications Signature Page
Appendix D: Technical Performance Goals Form
Appendix E: Direct Cost Descriptions for Applicants and Sub-Applicants
Appendix F: The Glossary of Terms
Appendix G: General Provisions
Appendix H: Special Provisions

BILLING CODE 4510–79–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:

Application
- ☐ **Construction**
- ☐ **Non-Construction**

Preapplication
- ☐ **Construction**
- ☐ **Non-Construction**

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code)*:

Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ **New** ☐ **Continuation** ☐ **Revision**

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

CERTIFICATIONS AND ASSURANCES

ASSURANCES AND CERTIFICATIONS SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Certification Regarding Lobbying, Debarment, Suspension, Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace,

B. Certification of Release of Information

C. Assurances - Non-Construction Programs

D. Applicant is not a 501(c)(4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instruction shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

Quarterly
Performance and Enrollment Goals

(Enter all data cumulatively)

Grant Number: **Program Year:**

Performance Goals

	Quarters 1	2	3	4	
Assessments					
Participants/Enrollments					
Employment Development Plans					
Job Placement Services					
Follow-up services at 90 days					
Placements/Entered Employments					
Terminations					

Core Training

	Quarters 1	2	3	4	
Classroom Training					
On-the-job training					
Remedial education					
Literacy and bilingual training					
Institutional skills training					
Occupational skills training					
On-site industry-specific training					
Customized training					
Apprenticeship training					
Upgrading and retraining					
Supportive Services					
Other (specify)					
Total Individuals					

Ancillary Services

	Quarters 1	2	3	4
Counseling and/or Vocational Guidance				
Job Search Assistance				
Case Management				
Job Club				
Work Experience				
Tools/Fees/etc.				
Other (specify)				

Enrollment Goals by Eligibility Groups (do not double count)

	Quarters 1	2	3	4
Campaign/Wartime veteran				
Service-Connected Disabled veteran				
Recently-separated veteran				

Enrollment Plan by Eligibility Subgroups (from above, as applicable, include here)

	Quarters 1	2	3	4
Youth veterans (20-24 years of age)				
Economically Disadvantaged veterans				
Welfare and/or Public Assistance recipient veterans				
Female veterans				
Homeless veterans				
African-American veterans				
Hispanic veterans				
Native American veterans				
Other minority veterans				

Benchmarks

	Quarters			
	1	2	3	4
Average Wage at Placement				
Placement Rate				

Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

	Administration	Program
Sub-Total	_____	_____
Fringe Benefits For All Positions	_____	_____
Contractual	_____	_____
Travel	_____	_____
Indirect Costs	_____	_____
Equipment	_____	_____
Supplies	_____	_____
Total Costs ----------	_____	_____
	Administration	Program

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

GLOSSARY OF TERMS

Adequate Employment - See Unsubsidized Employment.

Administrative Costs - All direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of recipients and sub-recipients of the grant funds.

Adult Basic Education - Education for adults whose inability to speak, read or write the English language or to effectively reason mathematically, constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, which is designed to help eliminate such inability and raise the level, of education of such individuals with a view to making them less likely to become dependent on others, to improve their ability to benefit from occupational training and otherwise increase their opportunities for more productive and profitable employment, and to make them better able to meet their adult responsibilities.

Ancillary Services - Employment and training related activities other than core training which may enhance a participant's employability.

Apprenticeship Training - A formal occupational training program which combines on-the-job training and related instruction and in which workers learn the practical and conceptual skills required for a skilled occupation, craft, or trade. It may be registered or unregistered.

Assurances and Certifications - The act of certifying compliance with applicable federal and state laws and regulations regarding the receipt and expenditures of grant monies.

ASVET - Assistant Secretary for Veterans' Employment and Training (USDOL)

Average Wage at Placement - This is an average of the wages earned by participants upon entering employment.

Barriers to Employment - Characteristics that may hinder an individual's hiring, promotion or participation in the labor

force. Some examples of individuals who may face barriers to employment include: single parents, displaced homemakers, youth, public assistance recipients, older workers, substance abusers, teenage parents, veterans, ethnic minorities, and those with limited English speaking ability or a criminal record or with a lack of education, work experience, credentials, child care arrangements, transportation or alternative working patterns.

Case Management - A client centered approach in the delivery of services, designed to prepare and coordinate comprehensive employment plans for participants, to assure access to the necessary training and supportive services, and to provide support during program participation and after job placement. In accordance with this definition, the case manager acts as a facilitator in assisting the participant toward a successful completion of training.

Classroom Training - Any training of the type normally conducted in an institutional setting, including vocational education, which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. It may also include training designed to enhance the employability of individuals by upgrading basic skills, throughout the provision of courses such as remedial education, training in the primary language of persons with limited English language proficiency, or English-as-language training.

Cognizant Federal Agency - The federal agency that is assigned audit or indirect cost rate approval responsibility for a particular recipient organization by the Office of Management and Budget. (OMB Circulars A-87, A-102)

Community-based organization (CBO)- means a private nonprofit organization that is representative of a community or a significant segment of a community and that has demonstrated expertise and effectiveness in the field of workforce investment.

Core Training - Core training activities are employment focused interventions which address basic vocational skills deficiencies that prevent the participant from accessing appropriate jobs and/or occupations.

Counseling - Counseling in this sense can be any form of assistance which (1) provides guidance in the development of a participant's vocational goals and the means to achieve those

goals; and/or (2) assist a participant with the solution to a variety of individual problems which may pose a barrier(s) to the participant in achieving vocational goals, e.g., PTSD counseling, substance abuse counseling, job counseling, etc.

Customized Training - A training program designed to meet the special requirements of an employer who has entered into an agreement with a Service Delivery Area to hire individuals who are trained to the employer's specifications. The training may occur at the employer's site or may be provided by a training vendor able to meet the employer's requirements. Such training usually requires a commitment from the employer to hire a specified number of trainees who satisfactorily complete the training.

Disabled Veteran - A veteran who is entitled to compensation under laws administered by the Veterans Administration; or an individual who was discharged or released from active duty because of service-connected disability.

DVET - Director for Veterans' Employment and Training

DVOP - Disabled Veterans' Outreach Program specialist

Economically Disadvantaged - means an individual who (A) receives, or is a member of a family which receives, cash welfare payments under a Federal, State, or local welfare program; (B) has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673 (2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)), or (ii) 70 percent of the lower living standard income level; (C) is receiving (or has been determined within the 6-month period prior to the application for the program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977; (D) qualified as a homeless individual under section 103 of the Stewart B. McKinney Homeless Assistance Act; (E) is a foster child on behalf of whom State or local government payments are made or (F) in cases permitted by regulations of the Secretary, is an individual with a disability whose income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements.

Employment Development Plan (EDP) - An individualized written plan or intervention strategy for serving an individual which, as a result of an assessment of the veteran's economic needs, vocational interests, aptitudes, work history, etc., defines a reasonable vocational or employment goal and the developmental services or steps required to reach the goal and which documents the accomplishments made by the individual.

Employment Service - the state level organization or public labor exchange system affiliated with DOL's United States Employment Service.

Entered Employment Rate - This is a method used to determine the percentage of participants who become employed. The percentage is calculated by dividing the number of total participants who were enrolled in the program by the number of participants who were placed or entered employment through the program.

ETA - The Employment and Training Administration

Enrolled Veteran - Shall be synonymous with the term participant. A veteran who has been determined eligible for services at intake and who is receiving or scheduled to receive core training.

Follow-up - The tracking of what happens to participants when they leave the program for a period of 180 days after initial placement. The reporting requirements are to include the following data/information employment status (number of Entered Employments/Placements at 180 days after program has ended), average hourly wage (earnings change at 180 days after program has ended), and job retention (of those enrolled in training, provide number of those still employed in trained occupation at 180 days after program has ended), these measures can be used to assess long-term program performance and activity strategies for clients with diverse characteristics.

FTE - Full-time Equivalent, a personnel charge to the grant equal to 2,080 hours per annum.

FY - Fiscal Year. For federal government purposes, any twelve month period beginning on October 1 and ending on September 30.

GED - General Equivalency Diploma. A high school equivalency diploma which is obtained by passing the General Educational Diploma Equivalency Test which measures the application of skills and knowledge generally associated with four years of traditional high school instruction.

In-kind services - Property or services which benefit a federally assisted project or program and which are contributed without charge to the grantee.

Indirect Cost - A cost that is incurred for a common or joint purpose benefitting more than one cost objective and that is not readily assignable to the cost objectives specifically benefitted.

Institutional Skills Training - Skills training conducted in an institutional setting and designed to ensure that individuals acquire the skills, knowledge and abilities necessary to perform a job or group of jobs in an occupation for which there is a demand.

Intake - A process for screening individual applicants for eligibility; making an initial determination whether the program can benefit the applicants; providing information about the program, its services and the availability of those services; and selecting individual applicants for participation in the program.

Job Club Activities - A form of job search assistance provided in a group setting. Usually job clubs provide instruction and assistance in completing job applications and developing resumes and focus on maximizing employment opportunities in the labor market and developing job leads. Many job clubs use telephone banks and provide group support to participants before and after they interview for openings.

Job Development - The process of marketing a program participant to employers, including informing employers about what the participant can do and soliciting a job interview for that individual with the employer.

Job Placement Services - Job placement services are geared towards placing participants in jobs and may involve activities such as job search assistance, training, or job development. These services are initiated to enhance and expedite participants' transition from training to employment.

Job Search Assistance (JSA) - An activity which focuses on

building practical skills and knowledge to identify and initiate employer contacts and conduct successful interviews with employers. Various approaches may be used to include participation in a job club, receive instruction in identifying personal strengths and goals, resume and application preparation, learn interview techniques, and receive labor market information. Job search assistance is often a self-service activity in which individuals can obtain information about specific job openings or general job or occupational information.

Labor Exchange - Refers to the services provided to job seekers and employers by the State Employment Service Agencies, WIA Service -Delivery Areas, or other entities. Services to job seekers may include assessment, testing, counseling, provision of labor market information and referral to prospective employers. Employer service may include accepting job orders, screening applicants, referring qualified applicants and providing follow-up.

Labor Force - The sum of all civilians classified as employed and unemployed and members of the Armed Forces stationed in the United States. (Bureau of Labor Statistics Bulletin 2175)

Labor market area - an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence.

Literacy and Bilingual Training - See Adult Basic Education.

LVER - Local Veterans' Employment Representative

Minimum Economic Need - The level of wages paid to a program participant that will enable that participant to become economically self-sufficient.

Minority Veterans - For the purposes of this SGA, veterans who are IV-C eligible and are members of the following ethnic categories: African American, Hispanic, American Indian or Alaskan Native, Asian or Pacific Islander.

Occupational Skills Training - Includes both (1) vocational education which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs, and (2) on-the-job training.

Offender - Any adult or juvenile who has been subject to any

stage of the criminal justice process for whom services under this Act may be beneficial or who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

OASVET - Office of the Assistant Secretary for Veterans' Employment and Training (ASVET)

On-the-job training (OJT) - means training by an employer that is provided to a paid participant while engaged in productive work in a job that-- (A) provides knowledge or skills essential to the full and adequate performance of the job; (B) provides reimbursement to the employer of up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and additional supervision related to the training; and (C) is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate. Usually in the OJT agreement, this is a promise on the part of the employer to hire the trainee upon successful completion of the training.

On-site Industry-specific Training - This is training which is specifically tailored to the needs of a particular employer and/or industry. Participants may be trained according to specifications developed by an employer for an occupation or group of occupations at a job site. Such training is usually presented to a group of participants in an environment or job site representative of the actual job/occupation, and there is often an obligation on the part of the employer to hire a certain number of participants who successfully complete the training.

Outreach - An active effort by program staff to encourage individuals in the designated service delivery area to avail themselves of program services.

Outside Funds - Resources pledged to the grant program which have a quantified dollar value. Such resources may include training funds from programs such as WIA Title I that are put aside for the exclusive use by participants enrolled in a program. Outside funds do not include in-kind services.

Participant - means an individual who has been determined to be eligible to participate in and who is receiving services (except followup services authorized under this title) under a program authorized by this title. Participation shall be

deemed to commence on the first day, following determination of eligibility, on which the individual began receiving subsidized employment, training, or other services provided under this title. **An individual who receives only outreach and/or intake and assessment services does not meet this definition.**

Placement - The act of securing unsubsidized employment for or by a participant.

Pre-apprenticeship Training - Any training designed to increase or upgrade specific academic, or cognitive, or physical skills required as a prerequisite for entry into a specific trade or occupation.

Pre-enrollment Assessment - The process of determining the employability and training needs of individuals before enrolling them into the program. Individual factors usually addressed during pre-enrollment assessment include: an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, and personal circumstances.

Program Resources - Includes the total of both program or grant and outside funds.

PY - Program Year. The 12-month period beginning July 1, and ending, on June 30, in the fiscal year for which the appropriation is made.

Recently Separated Veteran - refers to any veteran who applies for participation in a funded activity within 48 months after separation from military service.

Remedial Education - Educational instruction, particularly in basic skills, to raise an individual's general competency level in order to succeed in vocational education or skill training programs, or employment.

Service-Connected Disabled - refers to (1) a veteran who is entitled to compensation under laws administered by the Department of Veterans' Affairs (DVA), or (2) an individual who was discharged or released from active duty because of a service-connected disability. (29 U.S.C., Chapter 19, section 1503(27)(B))

SGA - Solicitation for Grant Application

Subgrant - An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee.

Subgrantee - The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Suitable Employment - See "Unsubsidized Employment"

Substance Abuser - An individual dependent on alcohol or drugs, especially narcotics, whose dependency constitutes or results in a substantial barrier to employment..

Supportive Services - means services which are necessary to enable an individual eligible for training, but who cannot afford to pay for such services, to participate in a training program funded under the grant. Such supportive services may include transportation, health care, financial assistance, (except as a post-termination service), drug and alcohol abuse counseling and referral, individual and family counseling, special services and materials for individuals with disabilities, job coaches, child care and dependent care, temporary shelter, financial counseling, and other reasonable expenses required for participation in the training program and may be provided in-kind or through cash assistance.

Unsubsidized Employment - Employment not financed from funds provided under the grant. In the grant program the term "adequate" or "suitable" employment is also used to mean placement in unsubsidized employment which pays an income adequate to accommodate the participant's minimum economic needs.

Upgrading and Retraining - Training given to an individual who needs such training to advance above an entry level or dead-end position. This training shall include assisting veterans in acquiring needed state certification to be employed in the same field as they were trained in the military (i.e., Commercial Truck Driving License (CDL), Emergency Medical Technician (EMT), Airframe & Powerplant (A&P), Teaching Certificate, etc.).

USDOL - United States Department of Labor

USDVA - United States Department of Veterans Affairs (Formerly the Veterans Administration).

Veteran - shall refer to an individual who served in the United States active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

Veterans' Workforce Investment Program (VWIP) - Reference made to the "VWIP Program" means all activity funded by VWIP and outside resources.

VWIP Resources - This term is synonymous with VWIP funds/funding.

Vocational Exploration Training - Through assessments such as interest inventories and/or counseling, a process of identifying occupations or occupational areas in which a person may find satisfaction and potential, and for which his or her aptitudes and other qualifications may be appropriate.

Welfare and/or Public Assistance recipient - An individual who, during the course of the program year, receives or is a member of a family who receives cash welfare or public assistance payments under a Federal, State, or local welfare program.

Workforce Investment Act (WIA) - The purpose of this Act is to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals, including veterans, who face serious barriers to employment and who are in need of such training to obtain prospective employment. The Act requires the ASVET to consult with the Secretary of the DVA to ensure that programs funded under VWIP of this Act meet the employment and training needs of service-connected disabled, Campaign and recently separated veterans and are coordinated, to the maximum extent feasible, with-related programs and activities.

Work Experience - A temporary activity (six months or less) which provides an individual with the opportunity to acquire the skills and knowledge necessary to perform a job, including appropriate work habits and behaviors, and which may be combined with classroom or other training. When wages are paid to a participant on work experience and when such wages are wholly paid for under WIA, the participant <u>may not</u> receive this training under a private, for profit employer.

Youth - An individual, between the age of 20 and 24 years of age, who served on active duty in the U.S. Armed Forces.

GENERAL PROVISIONS
GRANTS AND COOPERATIVE AGREEMENTS

I. ADMINISTRATIVE PROVISIONS

This grant is subject to the following administrative standards and provisions.

A. 29 CFR Part 96 (Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements). This rule implements, for State and local governments and Indian tribes that receive Federal Assistance from the DOL, Office of Management and Budget (OMB) Circular A-128 "Audits of State and Local Governments" which was issued pursuant to the Single Audit Act of 1984, 31 U.S.C.§§ 7501-7507. It also consolidates the audit requirements currently contained throughout the DOL regulations.

B. Section 168(b) of the Public Law 105-220 - Administration of Programs Please note that Sections 181-195 also apply.

C. 29 CFR Part 97 - Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

D. 29 CFR Part 95 - Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Etc.

E. 29 CFR, Parts 31, 32, and 33 - Nondiscrimination in Federally Assisted Programs of the Department of Labor, Effectuation of Title VI of the Civil Rights Act of 1964, and; Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance (Incorporated by Reference). These rules implement, for recipients of federal assistance, non-discrimination provisions on the basis of race, color, national origin, and handicapping condition, respectively.

F. Applicable provisions of WIA, 29 USC § 2931-39 and its implementing regulations and 20 CFR Part 667.

G. Appeals from nondesignation will be handled under 20 CFR Part 667.

II. MODIFICATIONS TO THE GRANT

A. Unilateral Modifications by Grant Officer

This grant may be unilaterally modified in writing by the Grant Officer whenever there has been a change in any federal statute, regulation, Executive Order, or other Federal law, which, as determined by the U.S. Department of Labor, is relevant to the financial assistance provided under the grant.

Should a grantee not qualify for second year funding, pursuant to the criteria setforth in Section V. Period of Performance, paragraph B. Second-Year Funding, the grantee may apply for a no cost extension or modification. This will allow the grantee to extend the grant period in order to meet the approved programmatic and fiscal goals.

B. Grant Changes Requiring Grant Officer Approval

29 CFR Part 95 and 29 CFR 97.30, as applicable, set forth requirements for obtaining Grant Officer approval for deviations from the grant objectives, scope or budget. Expenditures requiring prior written approval are found in the applicable Federal Cost Principles listed in paragraph III of these General Provisions.

Whenever a modification to the approved grant is requested, the request is to be submitted to the Director for Veterans' Employment and Training (DVET) by the grantee and shall include an application for proposed funding at the new total funding level (Standard Form 424, latest revision); and a short narrative describing the modification requested, the need for the request, and the expected results, if approved. The DVET will forward this request with his/her recommendations through the Regional Administrator for Veterans' Employment and Training through the Assistant Secretary for Veterans' Employment and Training to the Grant Officer.

III. ALLOWABLE COSTS

Payment up to the amount specified in the grant shall be made only for allowable, allocable, and reasonable costs actually incurred in conducting the work under the grant. The determination of allowable costs shall be made in accordance with the following applicable Federal Cost Principles:

State and Local Governments - OMB Circular A-87
Educational Institutions and Hospitals - OMB Circular A-21
Non-profit Organizations - OMB Circular A-122

IV. INTEREST EARNED AND PROGRAM INCOME

Requirements for the use and disposal of interest earned and program income are set forth in 29 CFR Part 95 and 29 CFR 97.21. When required to do so by this provision, the grantee shall remit promptly, but at least quarterly, interest earned on advances to the Grant Officer. The grantee may keep interest amounts up to $100 per year for administrative expenses.

If not otherwise addressed in this grant, program income earned during the period of the grant shall be added to funds committed to the project and used to further eligible program objectives.

V. GRANT CLOSEOUT PROCEDURES

A. Definitions

1. Grant closeout. The closeout of a grant is the process by which a Federal grantor agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the grantor.

2. Date of completion. The date when all work under a grant is completed.

3. Disallowed costs. Disallowed costs are those charges to a grant which the grantor agency or its representative determines to be unallowable in accordance with the applicable Federal Cost Principles or other conditions contained in the grant.

B. Grants shall be closed out in accordance with the following procedures:

1. Upon request, the grantor shall make prompt payments to a grantee for allowable reimbursable costs under the grant being closed out.

2. The grantee shall immediately refund to the grantor any balance of unobligated (unencumbered) cash advanced to the grantee that is not authorized to be retained by the grantee for use on other grants.

3. **Within 210 days after completion of the grant period, the grantee shall submit all financial, performance and other reports required by the Grant Officer to close out the grant.**

4. The Grant Officer shall make a settlement for any upward or downward adjustments to the Federal share of costs within one year after these reports are received.

5. In the case of grants which include outside contributions, the grantee has a legal requirement to provide the total amount of outside contributions indicated on the face sheet of the agreement, as amended.

6. The grantee shall account for any property acquired with grant funds, or received from the Government in accordance with the provisions of 29 CFR Part 95, or 29 CFR 92.50(b), whichever is applicable.

7. In the event a final audit has not been performed prior to the closeout of the grant, the grantor shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

VI. SUSPENSION AND TERMINATION PROCEDURES

A. Definitions

1. Termination. Termination means the permanent withdrawal of the authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee.

2. Suspension. Depending on the context, suspension means either, (a) An action by the Grant Officer which temporarily suspends Federal assistance under the grant pending corrective action by the grantee or pending a decision to terminate the grant by the Grant Officer; or (b) An action taken by a suspension official implementing Executive Order 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

B. When a grantee has failed to comply with the terms, conditions or standards of the grant, the Grant Officer may, on reasonable notice to the grantee, suspend the grant, and withhold further payments, or prohibit the grantee from incurring additional obligations of grant funds, pending corrective action by the grantee or a decision to terminate in accordance with paragraph C below. The Grant Officer shall allow all necessary and proper costs which the grantee could not reasonably avoid during the period of suspension provided that they meet the provisions of the applicable Federal Costs Principles.

C. This grant may be terminated for cause or convenience.

1. Termination for cause. The Grant officer may terminate this grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with any term of the award, whether stated in a federal statute or regulation, an assurance, an application, a notice of award, or elsewhere. The Grant Officer shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date. Payments made to the grantee or recoveries by the grantor under grants terminated for cause shall be in accord with the legal rights and liabilities of the parties.

2. Termination for convenience. This may only be accomplished pursuant to 29 CFR 97.44 or 29 CFR Part 95.

VII. ENCUMBRANCE OF GRANT FUNDS

Grant funds may not be encumbered/obligated by the grantee prior to or after the grant period of Performance. Encumbrances/obligations outstanding as of the end of the grant period may be liquidated (paid out) after the end of the grant period. Such encumbrances/obligations shall involve only specified commitments for which a need existed during the grant period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the Grantee's purchasing procedures and incurred within the grant period. All encumbrances/obligations incurred during the grant period shall be liquidated within 180 days after the end of the grant period, if practicable.

VIII. SITE VISITS

The grantor, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If any site visit is made by the grantor on the premises of the grantee or a subgrantee/contractor under this grant, the grantee shall provide and shall require its subgrantees/contractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay the work.

IX. ORDER OF PRECEDENCE

In the event of any inconsistency between any provisions of this grant, the following order of precedence shall apply:

A. Special Provisions
B. General Provisions
C. Grantee's Application for Federal Assistance

SPECIAL PROVISIONS

I. SCOPE

A. **General**: The grantee will conduct the veterans' employment and training program described in its Application for Federal Assistance in accordance with all terms and conditions of this grant agreement.

B. **Special Program Training Requirements**

Training will meet the requirements of the PY 2002, VWIP, SGA. Eighty percent (80%) or more of the clients must receive Core Training. Wages paid to the OJT participants will be based on the local prevailing wages for the occupation in which the participants are being trained.

C. **Program Activity Requirements**

The grantee will provide services as indicated in the Performance Goal charts submitted with their project application. These goals are incorporated by reference, in full, and attached to the grant document.

II. PAYMENTS UNDER THE GRANT

Advances/reimbursements will be drawn down by the grantee through the U.S. Department of Health and Human Services Payment Management System (HHS-PMS) via personal computer through SMARTLINK capability. When approved, grantees will receive a HHS/PMS access package to complete and return prior to requesting funds. A direct deposit form must be submitted for new grantees and whenever there are changes in financial institutions and/or approved signatures. Funds will be transferred electronically to the grantee's financial institution as arranged with HHS.

A. Advance payments are authorized only as provided in 29 CFR Part 97.21 (b) and (c) for state, local and Indian tribal governments and 29 CFR Part 95 for all others, as specified in the provisions of this grant.

B. The amount of advances requested will be based on actual and immediate cash needs in order to minimize federal cash on hand in accordance with policies established by the Treasury Department in regulation at 31 CFR Part 205.

C. The timing and amount of advances will be as close as administratively feasible to actual disbursements by the grantee for all allowable direct and indirect program costs.

D. The Grant Officer may, after providing due notice to the grantee, discontinue the advance payment method and allow payments only by reimbursement when a grantee receiving advance payments demonstrates unwillingness or inability to establish procedures to minimize the time elapsing between the receipt of the cash advance and its disbursement.

E. In addition to the preceding limitations, advances shall not be requested for amounts in excess of the amount determined by dividing the approved funding level for the grant by the number of months approved for operation, unless specific amounts have been approved in advance and are incorporated into the grant award within these provisions.

III. REPORTING REQUIREMENTS

A. Financial Reporting Requirements

1. The grantee will use Standard Form (SF) 269A, Financial Status Report to report outlays, program income, and the use of optional outside funds. SF 269A will be submitted no later than 30 calendar days after the ending date of each Federal fiscal year quarter during the grant period as a part of the required quarterly report. In addition, a final SF 269A will be submitted no later than 210 calendar days after the end of the grant performance period which will represent the final report.

2. See D. below for the address and frequency of submitting reports.

B. Reporting of Program Performance

1. The grantee will submit to the Director for Veterans' Employment and Training (DVET) on a quarterly basis a technical performance report that shows the cumulative planned goals identified on the Performance and Enrollment goals chart compared to actual accomplishments in terms of total number of participants/enrollments, number of assessments, number of employability development plans, number of job placement assistance, number of placements, number of terminations, and number of participants receiving 90 and 180 day follow-up. The reports will be submitted to the DVET no later than 30 days after the ending date of each Federal fiscal quarter (i.e., October 30, January 30, April 30, and July 30) during the grant period.

For those who receive follow-up, the following information will be collected and reported: (1) Employment status; (2) average hourly wage; (3) Job retention. An explanation must accompany the quarterly report detailing variances from the plan of 15%.

a. The grantee is required to report on the use of additional resources and services and the associated related expenditures (or equivalent value).

b. The characteristics of the total number of participants enrolled by the three eligible veteran's target groups to be served, especially the identified subgroups in the approved application.

c. A description of program monitoring done by the grantee during the report period.

d. Other pertinent information including analyses of particularly successful or problematic components of the program design.

2. The quarterly technical performance report will be submitted concurrently with the SF 269A, Financial Status Report.

3. A final technical performance report will be submitted no later than 210 calendar days after the end of the funded grant performance period and will summarize accomplishments, activities, final follow-up information and conclusions, to include the entered employment rate; employment retention rate; earnings change, and effectiveness of core training.

SIX (6) MONTH FINAL REPORT

No later than 210 days after the program performance period, the grantee will submit a aggregate report containing the following:

a. Final Financial Status Report (SF-269A)

b. Final Narrative Report identifying - (a) the total combined (directed/assisted) numbers of veterans placed during the entire grant period; (b) the number of veterans still employed during follow-up; (c) are the veterans still employed at the same or similar job, if not what is the reason(s); (d) was the training received applicable to jobs held; (e) wages at placement and during follow-up period; (f) an explanation of why those veterans placed during the grant period, but not employed at the end of the follow-up period, is not so employed; and (g) any recommendations to improving the program.

4. Between scheduled reporting dates the grantee will also immediately inform the Grant Officer's Technical Representative (GOTR) of significant developments affecting the grantee's ability to accomplish the work either in terms of programmatic or fiscal activities.

C. Corrective Action

1. When necessary, the grantee will initiate a Corrective Action Plan (CAP). A CAP will be required if, on a quarterly basis, actual grant accomplishments vary by a margin of 15% or more from the planned grant goals. All deviations from the plan by this extent must be fully explained in the grantee's quarterly technical report. When such slippage constitutes a significant weakness that may continue into the following quarter, a CAP must be initiated and developed in concert with the GOTR.

2. The CAP must identify the activity or expenditure source which has the variance, describe the reason(s) for the variance, provide specific proposed corrective action(s) and a timetable for accomplishment of the corrective action. The plan may include an intent to modify the grant when appropriate (e.g., as set forth in 29 CFR Part 97.30 and 29 CFR Part 95).

3. The CAP will be submitted as an addendum to the Quarterly Technical Performance Report.

D. All reports must cite the assigned grant number and be submitted as follows:

The original of all Financial Status Reports, and all performance reports to:

U.S. Department of Labor
Procurement Services Center
Room N-5416
200 Constitution Avenue, NW
Washington, D.C. 20210

One copy of the Financial Status Report, a copy of the HHS/PMS financial draw down report, and all performance reports should be mailed to the Director for Veterans' Employment and Training for the grantee's State.

E. Limitations on Administrative/Indirect Costs

All costs charged for administration, Direct or indirect, may not exceed 10% of the total Federal VWIP grant funds. These costs shall include the administrative costs, both direct and indirect, of recipients and subrecipients of the VWIP funds.

F. **Second Year Funding**

Due to the competitiveness of the VWIP grant, the grantee will be held to the performance and funding goals in the grant award and no modifications will be allowed during the first year of the grant, unless the grant does not qualify for second year funding. Subject to the availability of sufficient funds for PY 2003, funding beyond PY 2002 may be available and may be requested through a grant modification request, provided the applicant:

1. All program and fiscal reports were submitted by the established due date and may be verified for accuracy.

2. Complied with all applicable terms.

3. By the end of the third quarter, achieves at least 75% of the first year total goals for Federal expenditures, enrollments and core training (all training added together), or

4. 85% of total goals for the year if planned activity is NOT evenly distributed in each quarter.

All instructions for modifications and announcement of funding availability will be issued at a later date.

IV. GRANT ADMINISTRATION

A. The Director for Veterans' Employment and Training serves as the Grant Officer's Technical Representative (GOTR) and will monitor performance by the grantee. The GOTR is authorized to approve:

1. Technical matters not involving a change in the scope, cost, or conditions of this effort.

2. Progress reports.

B. The GOTR must approve all Corrective Action Plans (not including requests for a grant modification).

C. Requests for actions requiring Grant Officer approval, such as requests for budget revisions, modifications, and purchases of nonexpendable personal property must be submitted by the grantee to the GOTR who will include recommendations with the request and forward them both to the Grant Officer.

D. The GOTR is not authorized to direct any action that results in a change in scope, cost terms or conditions of this grant.

V. ALLOWABLE TRAVEL COSTS

A. The grantee is permitted to charge for actual transportation costs and travel allowances (per diem) of personnel who are authorized to undertake out-of-town, overnight travel under this grant. Such transportation costs shall not be allowed in an amount greater than the cost of first class rail or of economy air travel, unless economy air travel and economy air travel space are not available and the grantee certifies to these facts in the voucher or in other documents submitted for reimbursement. Travel allowances (per diem) will be allowed in accordance with the grantee's established policy, but in no event will such allowances exceed the maximum parameters established by the current Federal Travel Regulations.

B. The grantee will be allowed the cost of travel performed by its personnel in their privately owned automobiles, at a rate no greater than $.36 1/2 cents per mile, not to exceed the cost by the most direct economy air route between the points so traveled. If more than one person travels in such automobiles, no additional charge will be made by the grantee for such travel.

C. It is understood and agreed that no travel costs whatsoever for grantee personal travel from place of residence to and from normally assigned worksite will be allowed by the Government directly.

VI. SUB-AWARDS

Sub-awards must be awarded in accordance with 29 CFR 95.40. In compliance with Executive Orders 12876 as amended, 13220, 12928 and 13021 as amended, the Grantee is strongly encouraged to provide sub granting opportunities to Historically Black Colleges and Universities, Hispanic Serving Institutions and Tribal Colleges and Universities.

VII. SALARY PAYMENTS

Staff whose salaries are in whole or in part paid for with VWIP funds may only be charged for actual time worked that is chargeable to the grant, and that is work that is over and above any pre-existing duties related to veterans and/or employment related services. Under no circumstances may an organization be allowed to charge through this grant, or any other grant or contract, more than one-hundred percent of one FTE for each position.

VIII. PRINTING AND DUPLICATING

The grantee/recipient shall comply with all duplicating and printing regulations issued by the Joint Committee on Printing under the authority of Section 103, 501, and 502, Title 44, United States Code. The term "duplicating" as used herein means material produced on single unit duplicating equipment not larger than 11 by 17 inches and which have a maximum image of 10 3/4 x 14 1/4 inches using direct image plates not requiring the use of negatives. The term "printing" as used herein shall be construed to include and apply to the processes of composition, plate making, presswork, binding, and microform.

The grantee that receives prior approval from the Grant Officer to use DOL funds to support printing activities may not display for promotional purposes, the U.S. Department of Labor logo or seal on the item or items produced. However, an acknowledgment of such funding may be conveyed through language such as: "Preparation of this item was funded by the Department of Labor." Any reference to the Department used to promote the Federal agency is unallowable.

Under this grant/cooperative agreement, the grantee/recipient may duplicate up to a maximum of 5,000 copies of one page or 25,000 copies in the aggregate of multiple pages.

The grantee/recipient shall not use funds under this grant/cooperative agreement to provide duplicating in excess of the quantities stated above nor provide printing without the written authorization of the Joint Committee on Printing. Such authorization shall be obtained from the Grant Officer through the Departmental Printing Officer. Nothing in this clause shall prelude the procurement of writing, editing, preparation of manuscript copy, preparation of related illustrative material.

[FR Doc. 02–10496 Filed 4–26–02; 8:45 am]
BILLING CODE 4510–79–C

Federal Register

Monday,
April 29, 2002

Part II

Department of Transportation

46 CFR Parts 71, et al.

Alternate Hull Examination Program for Certain Passenger Vessels, and Underwater Surveys for Nautical School, Offshore Supply, Passenger and Sailing School Vessels Coast Guard; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

46 CFR Parts 71, 114, 115, 125, 126, 167, 169, 175 and 176

[USCG–2000–6858]

RIN 2115–AF95

Alternate Hull Examination Program for Certain Passenger Vessels, and Underwater Surveys for Nautical School, Offshore Supply, Passenger and Sailing School Vessels Coast Guard

AGENCY: Coast Guard, DOT.

ACTION: Interim Rule with request for comments.

SUMMARY: The Coast Guard is establishing an alternative hull examination program for certain passenger vessels. This rule establishes the option of alternating drydock examinations with underwater surveys for nautical school, offshore supply, passenger and sailing school vessels. This rule also establishes an examination process that gives industry additional latitude in scheduling inspections and will create parity between passenger vessels and all other Coast Guard-inspected vessels. We expect this rule to result in a reduction of time and paperwork associated with Coast Guard vessel inspections and examinations.

DATES: This interim rule will be effective on June 28, 2002. Comments and related material must reach the Docket Management Facility on or before July 29, 2002. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before June 28, 2002.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2000–6858), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this interim rule, call Don Darcy, Office of Standards Evaluation and Development (G–MSR), Coast Guard, at 202–267–1200. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting written comments and related material. The comment period for this rulemaking is 90 days. If you choose to submit your comments, please include your name and address, identify the docket number for this rulemaking (USCG–2000–6858), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the final rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Alternate Hull Examination (AHE) Program

In February 1997, the Riverboat Gaming Maritime Association (RGMA) of East Peoria, Illinois, wrote to the Coast Guard, asking if its member vessels may undergo hull examinations while afloat as an alternative to the examination at drydock that currently is required by our regulations. Many of RGMA's member vessels operate locally, are landlocked, and do not have drydock facilities of adequate size within a reasonable distance. They also operate in the low risk environments of fresh water rivers, protected lakes, near shore, or in shallow water. While reviewing RGMA's request, the Coast Guard considered the low risk environments in which these vessels operate and the advances in underwater survey technology. We concluded that an underwater hull examination, coupled with a thorough internal examination, could adequately evaluate the condition of a vessel's hull.

In March 1997, the owners of a vessel that operates in a low-risk environment requested a 1-year extension for completing their vessel's required drydock examination. This vessel operates approximately eight times a day on the Des Plaines River in Joliet, IL, in a restricted area (between two locks on the river). This vessel was due for its first 5-year drydock examination on May 31, 1997. The vessel's owners requested a 1-year drydock extension as an interim measure, pending the Coast Guard review of the proposed hull examination alternative.

In May 1997, along with a routine drydock extension survey, we observed a demonstration of the underwater survey methods currently used as industry practice. We determined that the survey results alone were sufficient to grant this vessel a 1-year drydock extension to May 1998, in accordance with 46 CFR 71.50–3. Under 46 CFR 71.50–3, the Commandant may allow extensions of the examination intervals between drydock examinations and internal structural examinations. The underwater survey procedures observed in the demonstration will be established by this rulemaking under the AHE Program.

Based on the results of the underwater survey demonstration, the Coast Guard created a pilot program that allows

owners or operators of qualified vessels to undergo an alternative hull examination process. This examination process includes an underwater survey and an internal structural examination along with annual condition assessments and scheduled preventative maintenance. Under this pilot program, the Coast Guard considers a drydock extension of up to 30 months for vessels that operate in low-risk environments.

To establish criteria for this pilot program, the Coast Guard Office of Compliance (G–MOC) published a Policy Letter 3–98 on March 5, 1998, entitled ''Drydock Extensions for Certain Passenger Vessels.'' This policy letter provides specific eligibility criteria, outlines application requirements, and establishes the survey criteria for these special drydock extensions. On March 5, 1998, the Coast Guard published a notice in the **Federal Register** (63 FR 10777) announcing that the G–MOC Policy Letter would be incorporated into regulations.

In April 1998, the first vessel in the pilot program underwent a second drydock extension survey using the guidelines in the G–MOC Policy Letter. Based on the results of the survey, the Coast Guard granted the vessel owner a 30-month drydock extension. After the Coast Guard set this precedent, several other gaming vessel owners or operators also completed successful surveys and were granted 30-month drydock extensions.

This rulemaking formalizes this pilot program and titles it: the Alternate Hull Examination (AHE) Program. The AHE Program allows owners or operators of qualifying vessels to receive a credit hull exam of up to 60 months, depending on the chosen method of hull examination. Once a vessel enters the program, it may continue to participate as long as certain requirements are maintained; however, the Officer in Charge of Marine Inspections (OCMI) may require it to be dry-docked if the AHE Program is deemed inadequate for evaluating its hull or if out-of-water repairs are required. The affected industry will save time and money, and still meet Coast Guard safety standards by using the advanced survey techniques under the AHE Program.

Underwater Survey in Lieu of Drydocking (UWILD)

Inspected United States passenger vessels, nautical school ships (public and civilian), off-shore supply vessels (OSV's) under 46 CFR chapter I, subchapter L, and sailing school vessels currently lack the regulatory option of alternating drydock examinations with underwater surveys. Current regulations grant this option to tank vessels, cargo and miscellaneous vessels, oceanographic research vessels, and mobile offshore drilling units (MODUs). Recognizing significant advances in underwater survey technology over the past decade, the Coast Guard has determined that it is safe and appropriate to include passenger vessels, nautical school ships, OSV's and sailing school vessels in the list of qualifying vessels.

Current regulations require U.S. passenger vessels operating on international voyages to drydock annually; however, their foreign counterparts generally drydock every 2 years. International regulations, as prescribed by the International Convention for Safety of Life at Sea (SOLAS) Chapter I, Regulation 7, require passenger ships to undergo annual surveys that include inspection of the outside of the ship's bottom. To satisfy this requirement, most classification societies, acting on behalf of foreign-flag administrations, accept drydock examinations every 2 years with an underwater hull examination at the mid-period. United States passenger vessels operating on international voyages will gain parity with their foreign counterparts by having such an option.

Navigation and Vessel Inspection Circular (NVIC) 1–89, entitled ''Underwater Survey Guidance,'' dated March 15, 1989, provides guidance for conducting underwater surveys to vessel owners or operators, underwater survey diving contractors, and other interested persons. The NVIC addresses the application process, the advanced planning necessary, and the procedure to be followed during an underwater survey.

This rule will incorporate the guidance from NVIC 1–89 into Coast Guard regulations, and allow owners or operators of U.S. passenger vessels, nautical school ships, OSV's and sailing school vessels with steel or aluminum hulls the option of alternating underwater hull surveys with drydock examinations. This voluntary option will result in a decrease in the overall costs for vessel owners or operators that choose this option. A discussion of the costs and benefits associated with this rule is included in the REGULATORY EVALUATION section of this publication.

Regulatory History

This interim rule was originally part of an NPRM published on November 15, 1999, that included regulations on Frequency of Inspection (64 FR 62018). In order to meet the International Convention for the Safety of Life at Sea, 1974, and the International Convention on Load Line compliance date of February 3, 2000, and to allow us to analyze the large number of comments on the Alternative Hull Examination and Underwater Survey portions of the NPRM, the Final Rule published on February 9, 2000, (65 FR 6494) dealt only with the Frequency of Inspection regulations.

Discussion of Comments

We received 50 letters of comment to our NPRM. Most of them included multiple comments. The comments generally supported the rulemaking and highlighted areas where commenters felt we needed additional consideration or clarification.

We have grouped the comments by topic, in order to facilitate our response.

General Comments

We received ten general comments. Three comments requested a public meeting. In lieu of a public meeting we are, in effect, extending the comment period by publishing this interim rule, rather than a final rule. This gives the public an opportunity for further comment.

We do not plan on holding a public meeting at this time. If you feel that a public meeting is still necessary, please send in a comment explaining why. Any public meeting would be announced by publication in the **Federal Register** at least thirty days in advance.

One comment requested a complete regulatory impact analysis and an extension of the comment period before a final rule. We have included a ''Regulatory Evaluation'' in this publication, which addresses the expected costs and benefits of the rule. This program is voluntary and, for those who choose to implement it, our regulatory evaluation shows that it will not result in a significant impact. Therefore, further regulatory impact analysis is not necessary.

One comment stated that not all gaming vessels are members of RGMA, and that as a result they are out of the loop and were not able to respond to the NPRM as fully as they would like. This interim rule gives the public an opportunity for further comment.

One comment stated that the AHE and underwater survey programs would benefit industry without compromising safety. The Coast Guard agrees with this comment. We have developed these programs as alternatives to drydock examinations for this reason.

One comment asked how many ROVs have been accepted by the Coast Guard. We have accepted one underwater ROV

for use in the AHE pilot program. This particular ROV incorporates the modern hull examination technologies described in this rule.

One comment stated that these rules would free up Coast Guard resources to perform other marine safety tasks. We agree with this comment, however, the purpose of this rulemaking is to provide vessel owners with a voluntary alternative to traditional dry docking requirements.

One comment expressed concern that the AHE rulemaking process and its results are driven by concerns with international treaties. The comment stated that this rule would result in economic disaster for at least one vessel operating on Lake Tahoe. The comment requested an extension of the comment period as well as a public meeting prior to final rule.

The AHE program was driven by concerns of a particular segment of the inland passenger vessel industry, not by international treaties. The Frequency of Inspection (FOI) portion of the proposed rulemaking was intended to align the vessel inspection intervals of U.S. regulations with the intervals prescribed in international treaties. Although included in the same notice of proposed rulemaking, the AHE and underwater survey portions of the proposed rule are not in any way associated with the FOI rules and have no connection to international treaties. To help address this confusion, we separated the AHE and underwater survey portions of the proposed rule from the original rulemaking.

Current regulations under 46 CFR Chapter I, Subchapters H, K, R, and T require all passenger vessels and nautical school ships to undergo hull examinations at periodic intervals. These examinations require that the vessel is hauled out of the water or placed in a drydock or slipway.

We recognize that the drydocking requirement may be particularly arduous for certain segments of the passenger vessel industry, and therefore the Coast Guard proposed the AHE and UWILD programs. These programs offer the owners or operators of qualifying vessels an alternative to out-of-water drydock examinations. Because they are alternatives, not requirements, the AHE and UWILD programs do not place any additional burden on the vessel owners or operators who do not wish to participate in these programs. The traditional drydock examination is still available. Also, for passenger vessels inspected under 46 CFR Chapter I, Subchapters T or K, and sailing school vessels under 46 CFR Chapter I, Subchapter R, the Officer-in-Charge, Marine Inspection may already give *special consideration* to authorize departure from the drydock examination requirements when warranted by unusual circumstances or arrangements.

One comment disputed the need for a public meeting. The comment stated that because all comments and the Coast Guard's responses will be part of the public record, there is no justification for the added expense of a public hearing. The Coast Guard agrees, in part. We recognize that not all interested parties learned of the NPRM until late in its comment period. In lieu of a public hearing we are, in essence, reopening the comment period for further public comment by publishing this interim rule, which is largely the same as what was proposed in the NPRM.

Comments on ROV Technology

We received fourteen comments on ROV technology. One comment stated that the ROV must be used in conjunction with divers, not as a stand-alone inspection tool. The comment recommended changing the wording to include ''if an underwater ROV *and divers* are used''. The comment suggested changes throughout parts 71, 115, and 176 that clarify when divers are used exclusively and when divers and ROV's are used. We agree that an underwater ROV is not a stand-alone inspection tool. Coast Guard acceptance of an underwater ROV will be based not only on the capabilities of the equipment, but also the qualifications of the operating team, the quality assurance and quality control methods employed, and the understanding that divers must be used to augment the examination process. We have revised the regulations to clarify this.

One comment strongly agrees with the rule's acknowledgement of the ROV's superior technology. We trust that this technology will continue to develop, offering convenience and value to industry while relieving some of the burden from our inspectors.

One comment stated that acoustical tracking systems are available to divers and offer the same quality of examination. The comment stated that this technology should be included as an alternative to the ROV in the regulations. Although we have not evaluated the use of acoustical tracking systems by divers, the regulations as written do not prevent the use of such systems if accepted by the OCMI.

One comment stated that the rule places too much emphasis on electronic data and not enough emphasis on the human element. Much of the ROV's work is done with a camera, not the other sensors. We agree that the human element plays a vital role in the hull inspection process, which is why a Coast Guard-accepted underwater ROV process must have a quality assurance program in place (including a training and qualification program for the ROV operating team). Secondly, in addition to a complete suite of NDT sensors for evaluating hull plating thickness, cathodic potential, coating thickness, and fracture detection, the ROV must have integrated video equipment to give a continuous visual indication of the vessel hull along its path of operation.

One comment stated that the rule should require the calibration of ROV instrumentation in accordance with the manufacturer prior to the survey. We agree that ROV instrumentation should be calibrated prior to the survey and periodically throughout the examination process. The quality assurance and quality control methods used by the underwater ROV company and operator will be critical to Coast Guard acceptance.

One comment stated that the ROV technology is unproven and these regulations would give one company a monopoly. We anticipate that several companies will develop this technology to pursue Coast Guard acceptance. We are incorporating the underwater ROV in this rulemaking to modernize the regulations and to keep pace with technology that has been demonstrated effective on numerous occasions. Along with the Coast Guard, the U.S. Navy and the American Bureau of Shipping have accepted the underwater ROV use as an alternative method to examine a vessel's hull.

One comment stated that the Coast Guard needs to provide criteria for the acceptance of ROV systems and that these criteria should be available for comment from the public and marine inspectors. We agree that an ROV should meet certain criteria. Based on current observation, the ROV process covers approximately 80 percent of the underwater hull. With the augmentation of divers, overall hull coverage is increased to approximately 90 percent. Therefore, we expect an ROV system will be able to assess at least 80 percent of the underwater hull.

One comment stated that this rule supports the use of cost-effective technology that is an improvement to marine safety and environmental protection. This technology includes a quality program with personnel certification, documented procedures, inspection plans, traceable calibration of equipment, and test material standards. We agree, which is why we are

incorporating this technology into regulation.

Two comments stated that this examination method is better than drydocking because the process is more comprehensive, accurate, repeatable, higher quality, and more cost effective. The ROV gathers data in the natural environment without stress or interference. We acknowledge that modern underwater ROV technology, when included as part of a comprehensive hull examination, can provide a level of safety and effectiveness that is equivalent to traditional drydock examination methods.

One comment stated that this technology should be extended to all vessels under the jurisdiction of the Marine Safety inspection program. Expanding the AHE program to vessels other than subchapter H, K, and T is beyond the scope of this rulemaking but could be considered for a future rulemaking.

One comment stated that the regulations should be clarified by using the phrase: ''ROV used to the maximum extent possible with the remainder of the inspection conducted by divers.'' When a Coast Guard-accepted underwater ROV is used for examination of the vessel's hull plating, we expect that the ROV will be used to the maximum extent possible. Divers must be used only for those areas of the hull and appurtenances that the ROV cannot access or is otherwise unable to evaluate. To clarify this, we are modifying the regulations. They will state that using an accepted underwater ROV process to examine the hull plating must be ''the predominant means'' and must be used to the fullest extent possible.

One comment disagreed with the statement that using an ROV is superior to other examination methods. Numerous gaugings are not that important when vessels without epoxy coating and sacrificial anodes can operate for 50–60 years. All recent vessels are equipped with epoxy and anode protection. An ROV's camera is almost useless at discovering hull damage even in clear water because it is difficult to get a three-dimensional sense on a two-dimensional screen. An internal structural exam coupled with divers is just as, if not more, effective than an ROV.

We disagree with this comment. The underwater ROV hull examination process has shown to be at least as effective as out-of-water drydock examinations. The Coast Guard has observed occasions where the ROV process detected hull deficiencies that might have gone undetected using traditional drydock and internal hull examination methods.

One comment responded to another comment we received in the docket by stating that an ROV produces an accurate and repeatable record of the exam. This comment also suggested that there is a low probability that conventional examination methods will detect the need for steel plate replacement. We agree with this comment to the extent that there are certain instances when plate replacement may be indicated using an ROV that may be overlooked by traditional methods, that overall an equivalent level of examination is achieved through either method.

Comments on the Definition of Fresh Water

The Coast Guard received two comments on the definition of fresh water. One comment stated that this rule relies on the benign nature of freshwater. However, fresh water under certain conditions—downstream from industrial out fall or during saltwater incursion—can be corrosive also. The commenter recommended that the Coast Guard set a standard for the acidity and conductivity of fresh water.

We recognize that certain conditions can cause accelerated corrosion in fresh water. These conditions are accounted for in the regulations that prescribe the drydocking intervals for Coast Guard-inspected commercial vessels and also for examination intervals under the AHE and underwater survey programs. It is left to the local OCMI to determine whether a vessel's area of operation is in fresh or salt water. The OCMI is given the same discretion for the AHE program.

The second comment stated that vessels using improperly designed, installed, and maintained shore ties may be destroying the vessel's immersed metal surfaces even though the vessel is in a benign environment. Regulations should require an initial and follow up survey of shore ties and prohibit electrical potentials and stray electrical currents for the vessel to be in the AHE program.

Stray current corrosion is not unique to vessels in the AHE program. The destruction caused by this type of corrosion may be rapid. The owner must be vigilant and ensure the integrity of any shore tie frequently.

Comments on Piping

One comment stated that piping outboard of skin valves could not be adequately examined using underwater techniques (UT). Regulations should require thorough UT gauging of piping and connections of vessels in the AHE and UWILD programs. We disagree with this comment. The piping outboard of skin valves can be adequately examined when the through-hull piping is mechanically plugged and sea valves are removed. If the condition of the piping is questionable, the marine inspector has the authority to require non-destructive testing, as appropriate.

Comments on § 71.50–5

One comment believed that there is a typo in this section: instead of drydock, internal, *or* underwater survey; it says drydock *and* underwater survey. Because of this typo, there is a question of whether an internal structural examination (ISE) is required. The commenter is mistakenly referring to the wrong section. Therefore no change is needed.

Comments on §§ 71.50–15, 115.620, 176.620 and §§ 71.50–29, 115.655, and 176. 655

The Coast Guard received five comments on these sections. One comment stated that the same length of drydock extension should be given to vessels whether divers or an ROV is used. Another comment stated that since there is an annual examination component for participation in AHE, a 5-year credit should be granted whether ROV or divers are used. Both methods require internal exams where most problems will be noted anyway. The customer should be able to determine the value of the ROV versus divers.

During the development of the AHE pilot program, as given by G-MOC Policy Letter 3–98, the Coast Guard decided that drydock extensions should be limited to 30 months when divers are used for the examination of hull plating. At that time, the Coast Guard had not yet evaluated the new underwater ROV hull examination technology, so the extension period when using an ROV had not been considered. Since setting the 30-month period for extensions some limitations of the AHE process using divers have been identified. The most significant limitation identified was the inability to cover the entire hull. When divers are used exclusively for the examination, it was estimated that only 30 percent of the underwater hull plating would be covered, on average. However, when an accepted underwater ROV was used, this figure generally climbs to over 80 percent. By augmenting the ROV process with divers, overall coverage will likely exceed 90 percent. Given the differences in coverage, we are keeping the differentiated periods. However, we

have defined the equivalencies of both types of underwater exams to a traditional drydock inspection. Based on this, we will not be issuing an extension, but rather granting a credit hull exam with the examination interval dependant upon the method used. In addition, we request comments on the following specific questions, and are accepting further comments during the interim phase of this rulemaking: (1) Should both methods receive the same level of credit? (2) If so, should additional requirements be invoked (such as required gaugings, examinations, etc.)? (3) Should the intervals remain the same with the option of requesting a waiver for the mid-period survey requirements on vessels meeting certain criteria?

One comment stated that the Coast Guard should add to these sections periodic independent review and evaluation of the program and vessels to ensure uniform application and results. We disagree with this comment. The program guidelines are well defined in the regulations and will be administered as consistently as other inspection programs. The procedures found in 46 CFR 1.03 may be used if the results of an inspection appear to be inconsistent with the regulations.

One comment questioned why the ROV approach, without a third party examiner, would receive a 60-month credit, while the certified third party examiner approach is only granted a 30-month credit when divers are still needed for 25 percent or more of vessel inspections.

The differences in the credit intervals granted are based on the methods employed to conduct the examination as well as the types of data obtained during the examination. The ROV team graphically tracks the progress of the examination and the data being obtained—both visual and NDT. The ROV has the ability to use the data collected to provide the inspector with a composite picture of the underway body of the vessel, as well as provides a quantified report of the examined areas. Examinations conducted with a third party examiner do provide a similar capability. The third party examiner is essential to ensure that the diver captures an adequate video record of the examination. During the examination, the third party examiner directs the diver to areas where he has detected an anomaly, whereas the ROV, by virtue of its data gathering capabilities, would record any such anomaly through its normal collection processes. It is true that a percentage of the hull may not be examined by an ROV (i.e.: rudders, propeller shafts, etc.). In the areas where a diver must be employed, a third party examiner may be required to ensure consistent results, particularly if a data collected by the diver can not be interfaced with the data collected by using the ROV.

One comment stated that the AHE process that uses divers exclusively requires re-surveys at 30-month intervals, which is a burden on owners or operators. The comment stated that this should be amended to 36 months to evenly space-time.

In response to concerns that an annual hull condition survey must be conducted at the 2-year anniversary, with only 6-months before expiration of a 30-month drydock credit, we have revised the drydock credit period for the AHE program when divers are used exclusively. The revision allows the AHE process to be conducted twice in a 5-year period with not more than 3 years between each AHE. The requirement for annual condition assessments remains the same; however, the revised drydock credit interval will allow all hull surveys and examinations under the AHE program to be conducted on an annual schedule. To clarify this, we revised §§ 71.50–15 and 71.50–29(c).

Comments on AHE Eligibility Criteria: §§ 71.50–17(a)(4), 115.625(a)(4), and 176.625(a)(4)

We received many comments on these sections. A number of comments stated that the focus of eligibility criteria should not be location or exposure of the waterway, but exposure of the vessel on its route. Vessels that operate in shallow waters, 0.5 miles from shore, like some vessels on the Great Lakes, should be allowed to participate in AHE. These comments recommend changing the wording of §§ 71.50–17(a)(4); 115.625(a)(4) and 176.625(a)(4) to ''operates in a reduced risk environment such as a river or along the shores of a lake''. Another comment stated that this section should include passenger vessels on restricted routes in semi-protected waters, like gaming vessels in the southern end of Lake Michigan. The Coast Guard agrees that a vessel operating on the Great Lakes should be allowed to participate if its operating route is limited to protected locations on the lake. The regulations have been changed to ''operates in a reduced-risk environment such as a river or the protected waters of a lake'' to clarify this intent.

Two comments requested that the 0.5-mile distance be extended to 1.0 mile from shore. One called the half of a mile measurement arbitrary and merely a carry over from the MOC policy letter 3–98. The Coast Guard disagrees. The reason for limiting program eligibility to vessels that operate exclusively in shallow water or within 0.5 nautical miles from shore was to provide an additional measure of safety in case of vessel flooding. There are many large passenger vessels operating in shallow inland rivers where, in the unlikely event that the vessel were to sink, it would come to rest on the river bottom and all passenger spaces would remain above water. Of course, not all vessels are operated in such shallow waters. For vessels operating in deeper waters, the 0.5 miles constraint provides a reasonable assuredness that the vessel can be safely grounded in the event of flooding.

One comment stated that the Coast Guard should eliminate the operating limitation of 0.5 miles from shore and shallow water from §§ 115.62 and 176.62. This requirement would eliminate several viable vessel operations in Lake Tahoe, Lake Meade, and Table Rock Lake. Vessels there already have a history of inspections while afloat. Another comment stated that it is impossible for a Lake Tahoe day/dinner cruise vessel to operate 0.5 miles from shore. The lake reaches 1200-foot depths. Conditions of the lake, ability of in-water repairs, etc. should allow boats on Lake Tahoe to continue to use underwater inspections (indefinitely) until it is necessary to remove the vessel from the water. A third comment stated that the 0.5-mile limitation threatens small businesses with extinction.

For small passenger vessels inspected under 46 CFR Chapter I, Subchapters T or K, the OCMI already has the authority to give special consideration to authorize departures from specific regulatory requirements where unusual circumstances or arrangements warrant such departures. Under this provision, the OCMI will have the authority to continue any special hull examination arrangements made at the local level, which preceded the AHE program, thus allowing certain vessels on the inland lakes to undergo underwater surveys in lieu of meeting drydocking or AHE program requirements. Thus, no change to the rule is necessary.

One comment stated that the definition and discussion of what a hull protection system is does not appear in the regulations. The regulations should provide the OCMI with some guidance. Some vessels do not use cathodic protection in fresh water. Coating is not as critical in fresh water. An explanation of ''adequate hull protection system'' was given in the proposed rule, and is still incorporated

in this rule. ''Adequate hull protection system'' means a method of protecting the vessel's hull from corrosion. Frequently, this is accomplished by the application of a combination of hull coatings and cathodic protection (usually zincs). For entry into the AHE program, the OCMI must be satisfied with the vessel's hull protection system.

Comments on the Preliminary Examination: §§ 71.50–21, 115.635, and 176.635

We received five comments to these sections. Three comments asked why a preliminary examination is only necessary when divers are used and not with an ROV. A preliminary examination is required when divers are used for the examination of the vessel's hull plating because it is critical that any areas of concern with regard to the vessel's hull be identified in advance of the pre-survey meeting. This allows the OCMI an opportunity to assess the areas of concern and to determine the necessary scope and focus of the hull plating examination during the AHE. A preliminary examination is not necessary when an underwater ROV is used for the examination of hull plating because the ROV survey process is quite comprehensive. As previously mentioned, the ROV process will cover approximately 80 percent of the underwater hull. With the augmentation of divers, overall hull coverage is increased to approximately 90 percent. Implicit in the ROV process is hull cleaning by a diver, which will support suitability.

Two comments stated that the preliminary exam should only be necessary when a vessel is entering or reentering the program with divers. The exam should not be necessary before each survey while the vessel is in the program. We agree with this recommendation. Since annual examinations are required for vessels examined by divers, the OCMI should already be familiar with the condition of the vessel and be aware of any suspect areas of the hull that require specific attention. This should eliminate the need for additional preliminary examinations. Therefore, as long as the vessel remains enrolled in the AHE program, the preliminary examination will be required only for program entry. We have clarified this in the regulatory text.

Comments on the Pre-survey Meeting: §§ 71.50–23, 115.640, and 176.640

A number of comments stated that the requirement in paragraph (a) that the ROV operator must attend the pre-survey meeting is overly restrictive. One comment pointed out that there might be more than one operator. The regulations should indicate that the meeting must be attended by a ''representative of the ROV operating company who is qualified to discuss the ROV capabilities and limitations.'' The Coast Guard agrees. The regulations have been modified to reflect these recommended changes.

A number of comments stated that in paragraph (b), the requirement for the vessel owner or operator to request the meeting in writing is overly restrictive. One comment pointed out that often someone other than a company official knows most about the vessel. The comment recommends using: ''owner, operator or designated agent.'' The Coast Guard agrees. The regulations have been modified to reflect these recommended changes.

One comment stated that this meeting is not necessary before each annual hull condition assessment and suggested adding: ''This meeting is required before the actual 36-month (divers) and 60 month (ROV) AHE survey.'' The Coast Guard intended that the pre-survey meeting only be required prior to each AHE survey. We clarified the regulations to reflect this.

One comment recommended that we make sure that the second sentence states that the third party examiner is present when divers are used exclusively. The Coast Guard agrees. The regulations have been modified to reflect these recommended changes.

One comment recommended a requirement to have the pre-survey meeting prior to the start of the survey, stating that meetings on the day of the exam result in unnecessary stress. While we agree with this comment we want to allow flexibility for the parties involved. We encourage but do not require that the two events be held on separate days.

Comments on the OCMI's Authority: §§ 71.50–25(c), 115.645(c), and 176.645(c)

A number of comments stated that they do not question the OCMI's authority, but believe that the explanation provided for requiring a vessel to be taken out of service is overly restrictive. As written, it could imply that permanent repairs and a full evaluation could not be conducted while in the water. They recommend allowing the OCMI to take out of service or drydock a vessel that has ''problems that cannot be repaired to the satisfaction of the OCMI while waterborne.''

We have revised this section to clarify the intent as follows: ''If the AHE reveals deterioration or damage to the vessel's hull plating or structural members, the OCMI may require the vessel be drydocked or otherwise taken out of service to further assess the extent of damage or to effect permanent repairs if the assessment or repairs cannot be completed to the satisfaction of the OCMI while the vessel is waterborne.''

Comments on Hull Thickness Readings: §§ 71.50–27(a), 115.650(a) and 176.650(a)

A number of comments stated that these sections are unclear regarding the number and spacing of transverse belts. One comment recommended requiring hull thickness readings at a minimum of bow, stem, and amidships and a longitudinal belt along the wind and water strake.

We have revised the affected paragraphs, to clarify our intent, to read as follows: ''Take hull plating thickness gaugings along transverse belts at the bow, stern, and midships, as a minimum. Plating thickness gaugings shall also be taken along a longitudinal belt at the wind and water strake. Individual gaugings along the transverse and longitudinal belts shall be spaced no more than 3 feet apart.''

One comment indicated that the statement we made in the proposed rule: ''the entire underwater survey is recorded on video when divers are used'' is incorrect. The diving companies use tactile examination methods and ultra-sonic testing of the shell plate and videotape of critical welds and other areas to determine the condition of the hull. Paragraph (a)(6) in each cite should not require audio and videotape of the examination.

As mentioned in the preamble to the NPRM, the AHE program was originally promulgated as a pilot program under MOC Policy Letter 3–98, entitled ''Drydock Extensions for Certain Passenger Vessels.'' As announced in the March 5, 1998, **Federal Register** publication (63 FR 10777) the intent of this rulemaking is to incorporate the policy letter into Coast Guard regulations. The policy letter clearly states that ''a complete underwater survey . . . shall be recorded on videotape.'' It is necessary to record the entire underwater survey by audio and video recording in order to document the areas covered by the underwater survey and to provide a complete account for the AHE. Even if the diver is doing a tactile examination of the hull, this process needs to be recorded in order to capture the diver's remarks and to verify the diver's location with respect to the hull.

Comments on Program Options: §§ 71.50–27, 115.650, and 176.650

Two comments stated that the third party examiner should be present during the examination no matter what method is used for the hull exam, because ROV operators do not have the knowledge of vessel construction. The comments also asked what the Coast Guard qualifications for the ROV operator are. Another comment stated that the third party examiner is an integral part of the examination process. Because divers are still needed to examine sea chests, bearings, rudders, wheels, thruster and other appendages, the third party examiner provides the objectivity needed to ensure the vessel's seaworthiness.

When a Coast Guard accepted underwater ROV is used as the predominant means for the examination of hull plating, the ROV operating team will take the place of the third party examiner. In order to be accepted by the Coast Guard, the underwater ROV process will include a quality control/assurance program, including an appropriate training program for the ROV operating team. As a minimum, the ROV operating team will consist of an ROV operator, a non-destructive testing (NDT) inspector, and an ROV tender/mechanic. The requirement has been added to the rulemaking.

The ROV operator will have at least 80 hours of documented field experience in navigating the particular ROV and will possess a thorough working knowledge of the ROV and its support equipment. Additionally, the operator will possess a strong understanding of structural plans and a familiarity with underwater ship structure and respective nomenclature.

The NDT inspector will have, as a minimum, Level II NDT certification in accordance with the guidelines of the American Society for Nondestructive Testing or that of an equivalent certification program.

With these acceptance criteria in place, the Coast Guard considers it unnecessary to have a third party examiner on site. For those portions of the vessel hull that the ROV is unable to evaluate and divers must be used, a third party examiner may be required to evaluate the results of the exam, especially if it can not be integrated into the results obtained by the ROV.

Comments on the Annual Hull Condition Assessment: §§ 71.50–19, 115.630, and 176.630

We received three comments on these sections. One comment stated that paragraph (h) seems vague and will result in differing interpretations and different OCMI expectations. The comment requested that the scope of the annual hull condition examination be more closely defined.

The second comment stated that there is no guidance on whether a third party examiner is needed for this annual inspection if the AHE survey was done with divers only.

A third comment stated that the annual hull condition assessment requirement is redundant. The annual hull condition assessment should be conducted at the midpoint between AHE's or 30 months from the original. If conducting an AHE using divers only, a hull condition assessment should be conducted at no less than one year, and no greater than 18 months from the original AHE. The scope of annual hull condition assessments should be defined as a visual exam of the vessel's underwater hull with emphasis on sea chests, thruster tunnels, running gear and the cathodic protection system; and ultrasonic tests of areas of known damage, corrosion, or otherwise suspect areas.

We agree that some of the regulations covering the annual hull condition assessment require further clarification. In response to the concern that the annual condition assessment is redundant or unnecessary, we disagree. An annual condition assessment of the vessel's hull helps to maintain a level of safety equivalent to that achieved by drydock examination. This helps by mitigating the concern that minor or latent hull damage may be overlooked during the AHE and provides a mechanism for examining those areas of the hull that require periodic reevaluation. However, because some vessels may be found to be in excellent condition upon completion of the AHE, the OCMI should have the authority to relax the scope of the annual hull condition assessment to accommodate this. In that regard, the regulations have been revised to give the OCMI the discretion to determine the necessary scope of the annual hull condition assessment.

On vessels where the AHE reveals few or no areas of concern relating to the vessel's hull condition, and where the outer hull is largely accessible from interior spaces, the OCMI may decide that an internal examination, coupled with random hull gaugings, is all that is necessary to complete the annual hull condition assessment. In contrast, for those vessels on which the AHE reveals significant damage or corrosion, after temporary repairs have been made, or after other critical areas of concern have been identified or are otherwise suspected, the OCMI may require both an internal exam and an underwater hull examination.

At the OCMI's discretion, the underwater examination may focus solely on known or suspect areas or may be more comprehensive in nature. If the OCMI determines that a comprehensive hull condition assessment is necessary and an underwater ROV was used for the AHE, it should not be necessary to employ an ROV for the annual condition assessment. Using divers should suffice for this purpose. Therefore, the OCMI has the discretion to determine whether it is necessary to have a third party examiner present during the annual hull condition assessment. If the condition assessment will involve little more than an internal examination and random hull gaugings, it should not be necessary to involve a third party examiner. Instead, if the assessment can be completed within a one-day period, a marine inspector should complete the assessment. As a result, the regulations have been revised to give the OCMI the authority to determine whether a third party examiner must be present during the annual hull condition assessment.

The scope of the annual hull condition assessment should be agreed upon well in advance, preferably upon completion of the AHE or the preceding hull condition assessment. The OCMI should advise the vessel representative, in writing, of the required scope of the annual hull condition assessment. Since this determination is best made upon completion of the AHE, it should not be necessary for the vessel owner or operator to provide this information when applying to the AHE program. In that regard, the regulations have been revised to remove from the application requirements the plan for conducting the annual hull condition assessment.

Prior to the scheduled annual hull condition assessment, the owner may submit to the OCMI a request for a waiver of the requirement. The OCMI may reduce the scope or extend the interval of the annual hull condition assessment if the operational, casualty, and deficiency history of the vessel, along with a recommendation of the vessel's master, indicates that it is warranted.

One comment stated that in paragraph (d), the statement to be signed by marine officers should provide the time period for which the officer would have knowledge of damage or suspected damage. The time period for which the officer would have knowledge of hull damage is irrelevant. By having a vested interest in the safety of the vessel, the master or chief engineer should be

adequately familiar with the vessel's hull condition and be aware of any known or suspect damage, regardless of the amount of time served on board the vessel.

Comments on the Third Party Examiner

We received seven comments on the third party examiner. One comment stated that companies with approved quality assurance programs do not need third party examiners. Companies with these programs should be able to train and certify their own people to manage the inspection.

Another comment suggested that the diving companies hire the third party examiner. This provides the greatest separation from the owner and avoids conflict of interest.

The regulations in this rule give the OCMI a wide degree of latitude to determine the acceptability of the third party examiner. Nothing in these regulations prevents the dive company from providing the third party examiner. We do not see a need for reviewing a company's quality assurance program since a significant part of the third party examiner's role will be quality assurance.

One comment agreed that the OCMI should determine whether or not the third party examiner is qualified, but noted that the Coast Guard should provide uniform guidance to OCMI's. We agree with this comment. The regulations have been changed to include a description of skills that a third party examiner should possess as guidelines to assist the OCMI in determining their acceptability.

One comment stated that the rule does not specify who will hire the third party examiners. Because the vessel owner may influence the objectivity of the third party examiner, the Coast Guard should put into policy that the diving company hires the third party examiner. The OCMI must consider whether any involved party could influence the objectivity of the third party examiner or whether a conflict of interest could exist. Where such conditions exist, the regulations give the OCMI the authority to deny use of the third party examiner.

One comment suggested that we remove the requirement for a third party examiner in §§ 115.635, 115.640, 115.650, 176.635, 176.640, and 176.650. Instead of removing field inspectors, the comment stated that the Coast Guard should retain third party examiners as an option for when the vessel owner and the Coast Guard deem it necessary. We agree on the importance of retaining Coast Guard inspectors, to build experience and to increase exposure to the marine industry. However, there is little to gain from having a marine inspector on site for several days on end while an underwater survey is conducted. The Coast Guard's needs are better served by placing the marine inspector in an oversight role where only the more critical portions of the AHE process need be observed. This enables the Coast Guard field offices to direct their limited inspection resources to higher risk activities.

One comment recommended the presence of a third party examiner during the entire inspection (including the inspection of hull plating) to increase the integrity of the ROV option. Another comment stated that the rule should address the qualifications of the third party examiner. A third comment stated that ROV operators are not trained to evaluate data in terms of proposing repairs, modifications, or recommending areas for further inspection. A third party examiner can do these things. Without a third party examiner, the Coast Guard inspector will become the de facto quality control person, which is undesirable. The third party examiner is the check and balance between the vessel owner and the diving contractor.

When a Coast Guard accepted underwater ROV is used as the predominant means for the examination of hull plating, the ROV operating team will take the place of the third party examiner. In order to be accepted by the Coast Guard, the underwater ROV process will include a quality control/assurance program, including an appropriate training program for the ROV operating team. As a minimum, the ROV operating team will consist of an ROV operator, a non-destructive testing (NDT) inspector, and an ROV tender/mechanic. The ROV operator will have at least 80 hours of documented field experience in navigating the particular ROV and will possess a thorough working knowledge of the ROV and its support equipment. Additionally, the operator will possess a strong understanding of structural plans and a familiarity with underwater ship structure and respective nomenclature. The NDT inspector will have, as a minimum, Level II NDT certification in accordance with the guidelines of the American Society for Nondestructive Testing or that of an equivalent certification program. With these acceptance criteria in place, we consider it unnecessary to have a third party examiner on site. For those portions of the vessel hull that the ROV is unable to evaluate and divers must be used, a third party examiner may be necessary if the diver obtained data can not be integrated into the data obtained by the ROV. The OCMI will determine whether a third party examiner is needed normally during the pre-survey meeting.

Additionally, it is not necessary that the ROV operating team be qualified to propose repairs or modifications or to recommend areas for further inspection. The job of the ROV operating team is to produce quantifiable data relating to the condition of the vessel hull. It will be the job of the Coast Guard marine inspector and OCMI to determine the suitability of repair or modification proposals. If assistance is needed in developing repair proposals, the vessel owner/operator always has the option to hire an independent marine consultant for this task. As far as recommending areas for further inspection, the marine inspector will retain this responsibility.

Comments on G–MOC/USCG Headquarters: §§ 115.655, 176.630, and 176.655

One comment stated that we should remove the role of the Coast Guard Headquarters' Office of Compliance (G–MOC) regarding the acceptance of specific entities and of inspection results. The comment argued that these are not Coast Guard Headquarters level activities. We agree with this comment, especially in view of the changes made to the regulations to put the AHE on parity with a traditional drydock inspection. To this end we have modified the regulations to allow the OCMI to grant a credit hull exam when warranted vice an extension. Normal extension requests and appeals will still be reviewed by G–MOC.

Comments on the AHE Procedure: §§ 71.50–25(a)(3), 115.645(a)(3), and 176.645(a)(3)

We received five comments on this section. One comment stated that the only inspection activity that the Coast Guard is required to observe is the removal of sea valves. The comment recommended that the wording ''in the presence of a marine inspector'' be removed from these sections to avoid delays.

Another comment stated that the third party inspector should be an alternative to the marine inspector observing the sea valve inspection in order to prevent delays.

A third comment suggested the presence of a third party inspector or adequate video coverage would be sufficient. We disagree with this comment. The removal of sea valves is one of the few evolutions of AHE procedures that involve a degree of risk to the vessel and to persons on board. It is in our best interest to require the

presence of a marine inspector during this evolution.

One comment suggested that the inspection of sea valves at every AHE is onerous. It recommended that the sea valves be inspected every other AHE if divers are used and every AHE if the ROV is used. Inspecting the sea valves is an integral part of the drydock or underwater hull examination. The Coast Guard requires that valves be inspected at 5-year intervals in accordance with 46 CFR 61.20–5(b).

One comment stated that in paragraph (a)(5) of these sections, non-fuel internal tanks should only be made available for internal exam if an external exam reveals a problem, or if the tanks are required to be examined in other regulations. These tanks should only be required to be internally examined once every 5 years. We agree with this comment. We have revised the regulation accordingly and added that sewage tanks need not be examined internally if examined externally and gauging is completed during the AHE.

Comments on NVIC 1–89

One comment stated that paragraph L (2) of NVIC 1–89 contains good information on the value of the contribution of an experienced diver. This should be included into the preamble of the rule. We do refer to NVIC 1–89 in the preamble, and have placed a copy of NVIC 1–89 in the docket for this rulemaking.

Comments on the Underwater Survey Program

Several comments requested that the Coast Guard extend the authority to conduct underwater survey in lieu of drydocking (UWILD) examinations to Offshore Supply Vessels (OSV) inspected under Title 46 Code of Federal Regulation (CFR), chapter I, subchapter L.

OSV's inspected under 46 CFR chapter I, subchapter I currently are authorized to participate in the UWILD program. The Coast Guard believes the UWILD program should be available to OSV's inspected under either subchapter, therefore the Coast Guard is authorizing those vessels inspected under subchapter L to participate in the UWILD program. Entry into this program will be authorized when this Interim Final Rule comes into effect.

One comment stated that the rule does not give incentive for a vessel to use the ROV technology for Underwater Surveys but should do so. The comment suggested, as an incentive, that the Coast Guard waive the initial drydock if the ROV is used. However, the comment also stated that the Coast Guard should not waive the initial drydock for vessels less than 15 years of age using only divers. We believe the regulation provides adequate incentive. Vessels enrolled in the AHE program that use ROV technology do not have to conduct the preliminary hull exam, as well as receiving a greater interval between inspections. Vessels that do not use ROV technology must conduct the preliminary hull examination.

One comment suggested that we revise the definition of drydock to remove references to ''drydock or slipway'' and include ''examination of all accessible parts of the vessel's underwater body and all through-hull fittings, and appurtenances.'' This comment is beyond the scope of this rulemaking. The scope of this rulemaking was limited to allowing the following passenger vessels to enter the underwater survey program: those under 46 CFR, chapter I, Subchapters T, K, and H, and nautical school ships and sailing school vessels under 46 CFR chapter I, Subchapter R. We are unable to make modifications to these regulations without making a wholesale change to the drydock examination regulations for all other commercial vessels.

One comment suggested that during alternate years, using the ROV should be considered equivalent to the traditional drydock for vessels that have completed the pre-survey drydock and underwater survey. This comment is beyond the scope of this rulemaking.

One comment suggested that vessels over 15 years of age should use ROV technology instead of drydock to gauge and determine if there is any appreciable deterioration. This comment is beyond the scope of this rulemaking.

One comment suggested that we develop a need-based system that uses ROV technology to determine whether a drydock is necessary. This comment is beyond the scope of this rulemaking. We are considering making this a part of future rule making, using risked based decision criteria to determine the need to perform traditional drydockings.

One comment suggested that the Coast Guard should create incentives for using ROV's. The comment recommended allowing owners or operators to avoid entry drydocking if ROV inspections are used. The comment also recommended granting consecutive drydock extensions for vessels using the ROV technology. This comment is beyond the scope of this rulemaking.

One comment stated that casualty and deficiency data to support this rulemaking was not provided in the NPRM. The comment stated that the Coast Guard should address this in all rulemakings. Casualty and deficiency data is not necessary in this instance. The changes to the regulations we are making in this rulemaking are designed to provide relief and flexibility rather than increase the burden on vessel owners or the Coast Guard.

One comment stated that under the Regulatory Flexibility Act, this rule would have a significant impact on many diving companies and other small businesses. There is no evidence that ROV inspections cost less than the use of divers. These regulations present the vessel owner/operator with hull examination alternatives. Prior to this rulemaking, drydocking was the only alternative available to passenger vessels. This rulemaking provides the vessel owner/operator with two distinct programs, offering additional hull examination alternatives. That is, the AHE program and the underwater survey program. The Coast Guard has designed these programs so that an equivalent level of safety is provided, regardless of the method chosen. These regulations give the vessel owners or operators the opportunity to weigh the economic impact of each alternative and to choose accordingly.

Discussion of Interim Rule

Alternate Hull Examination (AHE) Program

(a) General

This rule contains organizational and editorial changes to the regulations for the AHE Program.

Sections 71.50–5, 114.400, and 175.400

We are redesignating §§ 71.50–5, 115.600, and 176.612 as §§ 71.50–35, 115.605, and 176.665, respectively. Also, we are redesignating §§ 115.612, 115.630, 115.675, 176.612, 176.630, and 176.670 as §§ 115.665, 115.670, 115.675, 176.665, 176.670, and 176.675 respectively. The rule will add several new sections for the AHE Program and the Underwater Survey Program. These organizational changes will keep similar requirements together.

Sections 71.50–35, 115.665, and 176.665

We are adding the words ''underwater survey'' in the newly redesignated §§ 71.50–35, 115.665, and 176.665. This change will ensure that each vessel will have a plan on board that shows the vessel's scantlings whenever the vessel undergoes an examination, survey, or repairs. Vessel scantlings are dimensions of structural parts such as frames, girders, and plating used in shipbuilding. We are adding the option

of an underwater survey as part of the AHE Program for subchapters H, K, and T.

(b) Definitions

Sections 71.50–1, 114.400, and 175.400

We are amending the definitions for ''drydock examination'' and ''internal structural examination,'' and adding definitions for ''underwater survey,'' ''shallow water,'' ''third party examiner,'' ''ROV operating team,'' and ''alternate hull examination'' in § 71.50–1. We are adding the definitions for ''drydock examination,'' ''internal structural examination,'' ''underwater survey,'' ''shallow water,'' ''third party examiner,'' ''ROV operating team,'' and ''alternate hull examination'' in §§ 114.400, and 175.400. These definitions will apply to subchapters H, K, and T. We are adding the term ''appurtenances'' that was missing from the definition of ''drydock examination.'' The following are examples of appurtenances: sea chests, propellers, rudders, and tailshafts. We are removing the paragraph designations from all definitions within all three sections. We are adding the definition of ''underwater survey'' to introduce and clarify this examination process in our regulations. Lastly, we are adding a definition for ''effective hull protection system'' in all three sections in this heading.

(c) AHE Program Description

Sections 71.50–15, 115.620, and 176.620

We are adding §§ 71.50–15, 115.620, and 176.620 to explain the AHE Program for certain passenger vessels and list the steps of the program: the application process, the preliminary examination (not required for ROV exams), the pre-survey meeting, and the hull examination. The hull examination includes an underwater survey that may be conducted with divers or an underwater remotely operated vehicle (ROV). If divers are exclusively used for the underwater survey portion of the AHE examination process, you may receive a credit hull exam of up to 36 months (3 years). If a Coast Guard-accepted underwater ROV is used, you may receive a credit hull exam of up to 60 months (5 years).

(d) Eligibility Requirements

Sections 71.50–17, 115.625, and 176.625

We are adding §§ 71.50–17, 115.625, and 176.625, which contain eligibility requirements for the AHE Program and include construction, operation, and vessel condition requirements. To qualify for enrollment in the AHE Program, vessels must—

- Be constructed of steel or aluminum;
- Have an adequate hull protection system;
- Have operated exclusively in fresh water since the last drydock examination;
- Operate in rivers or protected lakes; and
- Operate within 0.5 nautical miles from shore, or operate in water shallow enough so the vessel itself can provide adequate safe refuge for all persons on board in the event of a hull breech. To determine whether your vessel can provide adequate safe refuge you must consider its stability and physical space.

In addition, the OCMI must accept the vessel's overall condition, history of hull casualties and deficiencies, and the AHE Program application.

Vessels that meet these criteria face much lower risks compared to vessels that operate in unrestricted salt-water environments.

To clarify paragraph (a)(2) in each of these sections, we have added a definition for ''effective hull protection system'' to the definitions section of each part.

(e) Application requirements

Sections 71.50–19, 115.630, and 176.630

We are adding §§ 71.50–19, 115.630, and 176.630, which contain the AHE Program application requirements for vessels that meet the eligibility criteria for this program. These sections establish when and to whom the vessel owner or operator must submit an application, and what information the application must contain. The application must be in the form of a letter and must include—

- The time and place for conducting the hull examination;
- The names of the diving contractors or the underwater ROV company;
- Plans and drawings of the vessel;
- Information on the condition of the vessel;
- Plans for conducting the hull examination;
- Plans for conducting preventative hull maintenance; and
- The name and qualifications of third party examiners (if applicable).

The annual hull condition assessment is required to ensure periodic evaluation of the vessel's hull condition. It should include an abbreviated survey (spot check) of the vessel's underwater hull, including its protection system and through-hull fittings and appurtenances, any repairs that have been made, and any suspect areas of the hull. This will also provide an opportunity to complete any necessary preventative maintenance such as replacement of zincs and repair of hull coatings.

The AHE Program is recognized to be time and resource intensive for the Coast Guard when compared to the traditional drydock examination process, particularly when divers are used exclusively for the underwater hull survey. We introduce the ''third party examiner'' in this rulemaking (as allowed in 46 U.S.C. 3103) to enable the Coast Guard to use its resources more effectively. The third party examiner is an individual who has been hired by the vessel owner or operator, and accepted by the OCMI, to oversee the entire examination process under the AHE Program. This person must be familiar with the inspection procedures and his or her responsibilities under this program.

(f) Preliminary Examination Requirements

Sections 71.50–21, 115.635, and 176.635

We are adding §§ 71.50–21, 115.635, and 176.635, which contain requirements regarding the preliminary examination (if required) and the presence of the third party examiner. During this exam, divers must assess the overall condition of the vessel's hull and identify specific concerns to be addressed during the underwater hull examination. The preliminary examination is not required when an underwater ROV is used.

(g) Pre-survey Meeting

Sections 71.50–23, 115.640, and 176.640

We are adding §§ 71.50–23, 115.640, and 176.640, which contain requirements for the pre-survey meeting in which the details of the examination process of the AHE Program are discussed with the OCMI. A vessel owner or operator must request this meeting in writing at least 30 days in advance of the proposed examination date. The pre-survey meeting must take place 2 weeks before the examination.

(h) AHE procedure

Sections 71.50–25, 115.645, and 176.645

We are adding §§ 71.50–25, 115.645, and 176.645, which contain requirements for conducting the underwater survey. To complete the underwater survey you must—

- Perform a general examination of the underwater hull plating and a detailed examination of all hull welds, propellers, tailshafts, rudders, and other hull appurtenances;
- Measure rudder and tailshaft bearing clearances and examine all sea chests, if required by 46 CFR part 61;

• Remove and inspect all sea valves in the presence of a marine inspector;

• Remove all passengers from the vessel when the sea valves are being examined, if required by the Officer in Charge, Marine Inspection;

• Allow access to all internal areas of the hull for examination; and

• Meet the procedural requirements for divers or underwater ROV's in §§ 71.50–27, 115.650, and 176.650.

In paragraph (a)(4) of §§ 71.50–25, 115.645, and 176.645, the OCMI may require removal of all passengers from the vessel during the examination of sea valves. Removal of passengers is likely to occur if there is a risk to the watertight integrity of the hull or an inability to keep the essential machinery in operation. The marine inspector may examine any areas of the vessel the OCMI deems necessary to ensure the safety of passengers and crew. In the event that damage or potential problems are found, the OCMI may require the vessel to be taken out of service or dry-docked. For example, if the vessel had a grounding, an allision, or a collision, or if structural damage was suspected for any reason, the OCMI may require the vessel to be dry-docked to examine and, if necessary, repair the damage.

(i) AHE Program Options: Divers or Underwater ROV

Sections 71.50–27, 115.650, and 176.650

We are adding §§ 71.50–27, 115.650, and 176.650, which include the requirements of the two options, divers or an underwater ROV, to conduct the underwater survey.

This rule requires the use of a third party examiner when divers are used exclusively for the underwater examination of hull plating. This rule also requires appropriate underwater audio and video equipment to record the examination when divers are used. We recommend a maximum water velocity of 1 knot for safe dive operations unless divers are line-tended as provided for in 46 CFR 197.430.

If divers are used exclusively for the underwater survey portion of the AHE Program, a third party examiner must observe the entire examination process. By requiring the use of a third party examiner, Coast Guard marine inspectors must be present only during critical portions of the examination process such as—

• Examination of critical welds, propeller, rudder, other hull appurtenances, sea chests, and sea valves;

• Plugging of sea chests and the removal of sea valves;

• Gauging of rudder and tailshaft bearings, if required by 46 CFR part 61; and

• Any other portions deemed necessary by the OCMI.

Since the entire underwater survey is recorded on video, the OCMI may review, as necessary, any details that were not observed at the time of survey in order to support his or her decision to grant a credit hull exam.

If an underwater ROV is used for the examination of hull plating, the presence of a third party examiner is not required because the ROV operator will take the place of a third party examiner during the underwater survey, which is the most time-intensive portion of the AHE examination process. We recognize that divers will be used for the portions of the underwater survey that the underwater ROV is incapable of covering. Depending on the vessel's hull configuration, the underwater ROV may not be able to access as much as 10 to 20 percent of the vessel's hull plating. In addition, divers will be used to examine sea valves, sea chests, hull appurtenances, and rudders. A third party examiner will be present at the time when a diver is used during the examination if the data collected can not be integrated into the data collected with the ROV.

Current ROV technology available to the marine industry includes underwater inspection vehicles with integrated non-destructive testing (NDT) sensors, high-resolution video systems, acoustic navigation and positioning systems, and data management systems with digital recording. Such systems are capable of capturing detailed, quantifiable data on hull plating thickness, coating thickness, coating condition, cathodic protection field, plating discontinuities (crack detection), and hull form analysis. With the use of acoustic navigation and positioning systems, all survey data can be correlated to an exact position (within a few inches) on the vessel's hull, which provide permanent, repeatable results for long-term trend analysis. Along with video imaging of the survey, inspection reports generated by digital data analysis can include color visualizations (maps) of the vessel's hull that indicate plating thickness (or wastage), coating thickness, and cathodic protection.

If you choose to use an underwater ROV, the design, equipment specifications, results-reporting capabilities, operator qualifications, and quality assurance methods must be accepted by the OCMI. Additionally, the underwater ROV must undergo at least one operational test before acceptance.

Because modern underwater ROV technology offers a hull examination process far superior to traditional underwater survey methods, and at least equivalent to hull examinations conducted in drydock, we are establishing a 60-month (5-year) hull examination interval when an Underwater ROV is used in the AHE process. A 5-year interval is in line with the current drydock examination interval required by regulations for passenger vessels operating in fresh water.

(j) Reports

Sections 71.50–29, 115.655, and 176.655

We are adding §§ 71.50–29, 115.655, and 176.655, which provide requirements for the hull examination report. The OCMI will evaluate the hull examination report and use it as an element in assessing the overall condition of the vessel.

If divers are used exclusively to examine the underwater hull plating, you must provide a written report to the OCMI. This report must include thickness-gauging results, bearing clearances if required, a copy of the audio and video recordings, and any other information that will help the OCMI evaluate your vessel for a credit hull exam. The third party examiner must sign the report and confirm the validity of its contents. By signing the report, the third party examiner confirms that the results of the report are true and accurate. If you used divers exclusively to examine the hull plating and the report is approved, you could receive credit up to 36 months (3 years). Underwater surveys are required to be conducted twice every 60 months (5 years). If your report is not approved, the OCMI may require your vessel to be dry-docked to ensure passenger safety.

When an underwater ROV is used to examine the hull plating, you must provide a report to the OCMI in an acceptable format. If the underwater ROV report is approved, you will receive a credit up to 60 months (5 years). If your report is not approved the OCMI may require your vessel to be drydocked to ensure passenger safety.

(k) Continued Participation

Sections 71.50–31, 115.660, and 176.660

We are adding §§ 71.50–31, 115.660, and 176.660, which establish the requirements for continued participation in the AHE Program. To continue to participate in the AHE Program, the rule will require you to—

(1) Conduct an annual hull condition assessment that evaluates your vessel's hull, through-hull fittings and

appurtenances and provides ultrasonic test results of high risk areas of the vessel's hull if the AHE was performed exclusively by divers or if deemed necessary by the OCMI;

(2) Conduct preventive maintenance which must include—

- Inspection and replacement (as needed) of zinc anodes;
- Inspection and cleaning (as needed) of the underwater hull;
- Inspection and maintenance of the rudder and shaft seals;
- Inspection and operational testing of sea valves; and
- Flushing of sea chests and sea strainers; and

(3) Submit the results of your preventive maintenance plan and hull condition assessment report to the Officer in Charge, Marine Inspection, annually. These reports must conform to the plans submitted in the application and may be in the form of reports or checklists, whichever format is more effective.

Participating in the AHE Program is entirely voluntary. Once a vessel enters the program, it may receive credit for a hull exam; however, the OCMI may require it to be dry-docked if the examination process of the AHE Program is deemed inadequate for evaluating its hull condition or if out-of-water repairs are necessary.

Underwater Survey Program

(a) General

This rule contains organizational and editorial changes to the regulations for the Underwater Survey Program.

Sections 167.15–35 and 169.230

We are adding the term ''underwater survey'' to §§ 167.15–35 and 169.230. This change will require each vessel and barge to have a plan on board showing the vessel's scantlings during each underwater survey.

(b) Definitions

Sections 125.160, 167.15–27 and 169.231

We are adding the definition of ''underwater survey'' in §§ 125.160, 167.15–27 and 169.231. We are adding the definition of ''underwater survey'' to introduce and clarify this examination process in subchapters L and R.

(c) Examination Intervals

Sections 71.50–3, 115.605, 126.140, 167.15–30, 169.229, and 176.605

In these sections, we are revising the requirements for the drydocking and internal structural examination intervals to allow the option to participate in an underwater survey for qualifying passenger vessels, nautical school ships, OSVs and sailing school vessels. The revisions to §§ 71.50–3, 115.605, and 176.605 provide the underwater survey option for passenger vessels on international voyages and passenger vessels not operated on international voyages. In §§ 126.140 and 167.15–30, the revisions will allow nautical school ships operating in fresh or salt water and OSVs operating in salt water the option to have an underwater survey every other interval instead of drydocking (UWILD). In § 169.229, the revisions will allow sailing school vessels operating in fresh or salt water the option to have an underwater survey instead of drydocking.

(d) Vessel Qualifications and Application

Sections 71.50–5, 115.615, 167.15–33, 169.230, and 176.615

We are adding these sections to establish requirements for vessels to qualify for an underwater survey instead of alternate drydock examination. The OCMI may approve an underwater survey for a vessel if it is less than 15 years of age, and if it meets the structural and operational requirements of these sections. A vessel over 15 years of age may also qualify for an underwater survey if the results of hull gaugings taken at the drydock examination preceding the underwater survey find no appreciable deterioration and the OCMI provides a recommendation to the District Commander. The OCMI will notify the vessel owner or operator of approval. These sections also outline the application contents and submission requirements for an underwater survey.

Difference Between the NPRM and This Interim Rule

The most significant difference between the NPRM and this interim rule is changing the AHE program from one of continuous extensions to establishing an equivalency between a satisfactory AHE exam and a traditional drydock exam allowing an OCMI to give credit for a hull. Another significant difference is the addition of offshore supply vessels to the UWILD program. Other changes are incidental and are described in the comments section.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

Alternate Hull Examination (AHE) Program

Certain passenger vessels, operating on restricted inland waterways, experience higher drydocking costs compared to vessels with convenient access to drydock facilities. These costs are related to the hull inspection process and include, as examples, lost revenue during transit to and from drydock facilities and time out of water. However, some of these vessels are at a lower risk for hull-stress due to their limited operating environments. To alleviate this cost burden, we are offering the AHE Program as an option to drydock examinations. These alternatives may, in some cases, be less costly for owners or operators than drydocking. Because the alternatives are voluntary, no costs are associated with this component of the rulemaking. Each vessel owner is given the option to choose the most cost-effective hull examination process. We estimate that about 51 passenger vessels will take advantage of the increased flexibility of this rule.

Underwater Survey In Lieu of Drydocking (UWILD) Program

The UWILD Program will provide increased flexibility for hull inspections of U.S. passenger vessel, nautical school ship, sailing school vessel, and offshore supply vessel owners or operators. This program allows a vessel to undergo an underwater survey instead of a drydock examination every other interval and is currently available to most other classes of inspected vessels.

Due to the success of the UWILD Program with these other vessel types, and the advanced underwater survey technology now available, the Coast Guard will allow passenger vessel and other specific vessel owners or operators the option to alternate between underwater surveys and drydock examinations. There are no additional costs to the vessel owners or operators with this component of the rulemaking because the use of underwater survey is completely voluntary. We estimate that 6,224 vessels could take advantage of the increased flexibility of this rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule will have a significant economic impact on a substantial

number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

We received one comment stating that under the Regulatory Flexibility Act, this rule would have a significant impact on many diving companies and other small businesses. These regulations present the vessel owner/operator with hull examination alternatives. Prior to this rulemaking, drydocking was the only alternative available to passenger vessels. This rulemaking provides the vessel owner/operator with two distinct programs, offering additional hull examination alternatives. This rule does not impose mandatory costs on any entity, and it will not increase costs to small entities. Instead, it will reduce the burden placed on them by allowing alternative means for conducting a drydock examination. One of those options is the use of divers for underwater surveys.

The anticipated benefits of this rulemaking to small entities are as follows:

AHE Program

These regulatory options reduce the inspection burden for vessels that must travel a great distance to drydock while providing an equivalent level of safety as drydock hull examinations. In cases where it is cost efficient for the vessel owner, these options will greatly decrease the amount of time and resources associated with a traditional drydock inspection and will therefore be beneficial to small entities. Because each vessel owner or operator experiences varying transit distances and financial impact, each owner should assess these factors on an individual basis.

UWILD Program

This voluntary option aligns certain U.S. vessel regulations with international standards. This alignment will help the owners or operators of these U.S. vessels by granting them the same flexibility given to other vessel classes for conducting drydock examinations. By preventing significant delays and revenue loss, this option is expected to be more cost-effective than traditional drydock examinations for small entities that wish to participate in this voluntary option.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. No data is available at this time to determine how many of the vessels affected by this rule are small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Don Darcy, Office of Standards Evaluation and Development (G–MSR), 202–267–1200.

Small entities may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The titles and descriptions of the collection of information, descriptions of those who must collect the information, and estimates of the total annual burden, follow. Estimates cover the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing the reviewing collection.

The information collection requirements of this rule are addressed in the previously approved OMB collection 2115–0133.

Title: Vessel Inspection Related Forms and Posting Requirements Under Title 46 U.S. Code.

Summary of the Collection of Information: This rule requires vessel owners or operators to send applications, hull exam reports, hull condition assessments, and preventive maintenance plans to the Coast Guard in order to participate in the Alternative Hull Exam and UWILD Programs. Participation in the programs is completely voluntary. The previously approved OMB Collection 2115–0133 is revised and amended by the following sections:

AHE Program. 46 CFR 71.50–19, 29, 31; 115.630, 655, 660 and; 176.630, 655, 660.

UWILD Program. 46 CFR 71.50–5, 115.615, 126.140, 167.15–33, 169.230 and 176.615.

Need for Information

AHE Program. The collection provides the Officer in Charge, Marine Inspection (OCMI) with information necessary to determine the hull condition of a vessel and if it is eligible for the AHE Program. The application includes a preventative maintenance plan and a hull condition assessment plan.

UWILD Program. Depending on the age of the vessel, owners must apply to the OCMI or District Commander for approval of underwater surveys instead of drydock examinations for each vessel. This is a voluntary collection of information, which is intended to allow greater flexibility for owners of vessels.

Proposed Use of Information

AHE Program. The application for an underwater hull inspection provides the OCMI with information necessary to determine if a vessel is eligible for the AHE Program.

UWILD Program. The underwater survey application provides the OCMI information to determine if an underwater survey is sufficient to replace a drydock hull inspection.

Description of the Respondents

AHE Program. The affected respondents are qualifying passenger vessels that operate exclusively on restricted, low-risk environments.

UWILD Program. The affected respondents for this voluntary inspection process are all U.S. vessels that have steel or aluminum hulls and are covered under subchapters H, K, L, R, and T.

Number of Respondents

AHE Program. We anticipate that 51 respondents will take advantage of this program.

UWILD Program. We anticipate that 85 respondents will take advantage of this program.

Frequency of Response

AHE Program. The Coast Guard expects the owners of 20 vessels to apply for participation in the AHE Program annually.

UWILD Program. The Coast Guard expects the owners of 47 vessels to apply for underwater surveys annually.

Burden of Response

AHE Program. We expect 20 AHE applications per year. Each application is expected to place a burden of two hours including research and legal review. Therefore, on average there will be an annual burden of 40 hours (20 applications per year × 2 hours per application).

UWILD Program. We expect 47 applications for underwater surveys per year. Each application will place a burden of two hours including research and legal review. Therefore, on average there will be an annual burden of 94 hours (47 applications per year × 2 hours per application).

Estimate of Totel Annual Burden

There are 134 annual burden hours attributed to this rule with a cost of $7,638 (at the industry wage rate of $57 per hour). Because the actual OMB Collection 2115–0133 entails many other collection requirements not affected by this rule and to maintain accuracy with the Coast Guard's collection burden budget, we are publishing the total hour burden for collection 2115–0133. The new total of burden hours for OMB 2115–0133 is 1,578 hours.

Public Comments on Collection of Information

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES,** by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).)

This rule falls into the category of maintenance of vessels. Because the States may not regulate within this category, preemption under Executive Order 13132 is not an issue.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Consultation and Coordination With Indian Tribal Governments

This proposed rule will not have tribal implications; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, it is exempt from the consultation requirements of Executive Order 13175. If tribal implications are identified during the comment period we will undertake appropriate consultations with the affected Indian tribal officials.

Energy Effects

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

Environment

This rule deals exclusively with changing inspection intervals and providing voluntary dry-docking alternatives for certain passenger vessels. We considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(d), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 114

Incorporation by reference, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 115

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 125

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Seamen.

46 CFR Part 126

Authority delegation, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 175

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 176

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard is amending 46 CFR parts 71, 114, 115, 125, 126, 167, 169, 175 and 176 as follows:

PART 71—INSPECTION AND CERTIFICATION

1. The authority citation for Part 71 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3205, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

2. Revise § 71.50–1 to read as follows:

§ 71.50–1 Definitions relating to hull examinations.

As used in this part—

Adequate hull protection system means a method of protecting the vessel's hull from corrosion. It includes, as a minimum, either hull coatings and a cathodic protection (CP) system consisting of zinc anodes, or an impressed current CP system.

Alternative Hull Examination (AHE) Program means a program in which an eligible vessel may receive an initial and subsequent credit hull examination through a combination of underwater surveys, internal examinations, and annual hull condition assessment.

Drydock examination means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings and appurtenances.

Internal structural examination means an examination of the vessel while afloat or in drydock and consists of a complete examination of the vessel's main strength members, including the major internal framing, the hull plating, voids, and ballast tanks, but not including cargo, sewage, or fuel oil tanks.

Remotely operated vehicle (ROV) team, at a minimum, consist of an ROV operator, a non-destructive testing inspector, an ROV tender or mechanic, and a team supervisor who is considered by the Officer in Charge, Marine Inspection (OCMI), to have the appropriate training and experience to perform the survey and to safely operate the ROV in an effective manor. The team must also have a hull-positioning technician present. This position may be assigned to a team member already responsible for another team duty.

Shallow water is an ascertained water depth at which the uppermost deck(s) of a sunken vessel remain above the water's surface. The determination of the water's depth is made by the Officer in Charge, Marine Inspection (OCMI) who considers the vessel's stability (passenger heeling moment), the contour of the hull, the composition of the river bottom, and any other factors that would tend to prevent a vessel from resting an even keel.

Third party examiner means an entity:

(1) With a thorough knowledge of diving operations, including diving limitations as related to diver safety and diver supervision;

(2) Having a familiarity with, but not limited to, the following—

(i) The camera used during the AHE; and

(ii) The NDT equipment used during the AHE, including the effect of water clarity, and marine growth in relation to the quality of the readings obtained;

(3) Having a familiarity with the communications equipment used during the AHE;

(4) Possessing the knowledge of vessel structures, design features, nomenclature, and the applicable AHE regulations; and

(5) Able to present the Officer in Charge, Marine Inspection, with evidence of formal training, demonstrated ability, past acceptance, or a combination of these.

Underwater Survey in Lieu of Drydocking (UWILD) means a program in which an eligible vessel may alternate between an underwater survey and the required drydock examinations.

3. In § 71.50–3 revise the section heading, paragraph (a), the introductory text of paragraph (b), redesignate paragraph (f) as paragraph (g), and add new paragraph (f) to read as follows:

§ 71.50–3 Drydock examination, internal structural examination, underwater survey, and alternate hull exam intervals.

(a) If your vessel is operated on international voyages, it must undergo a drydock and internal structural examination once every 12 months unless it has been approved to undergo an underwater survey per § 71.50–5 of this part.

(b) If your vessel is operated on other than international voyages and does not meet the conditions in paragraphs (c) through (f) of this section, it must undergo a drydock and internal structural examination as follows unless it has been approved to undergo an underwater survey per § 71.50–5 of this part:

* * * * *

(f) For a vessel that is eligible per § 71.50–17 and the owner opts for an alternate hull examination with the underwater survey portion conducted exclusively by divers, the vessel must undergo two alternate hull exams and two internal structural exams within any five-year period. If a vessel completes a satisfactory alternate hull exam, with the underwater survey portion conducted predominantly by an approved underwater ROV, the vessel must undergo one alternate hull and one internal structural exam, within any five-year period. The vessel may undergo a drydock exam to satisfy any of the required alternate hull exams.

§ 71.50–5 [Redesignated as § 71.50–35 and amended]

4. Redesignate § 71.50–5 as § 71.50–35; in paragraph (b), remove the words ''a drydock examination or internal structural examination'' and add, in their place, the words ''a drydock examination, internal structural

examination, or underwater survey,''; in paragraph (c), remove the words ''a drydock examination or internal structural examination'' and add, in their place, the words ''a drydock examination, internal structural examination, or underwater survey''.

5. Add new § 71.50–5 to read as follows:

§ 71.50–5 Underwater Survey in Lieu of Drydocking (UWILD).

(a) The Officer in Charge, Marine Inspection (OCMI), may approve an underwater survey instead of a drydock examination at alternating intervals if your vessel is—

(1) Less than 15 years of age;

(2) A steel or aluminum hulled vessel;

(3) Fitted with an effective hull protection system; and

(4) Described in § 71.50–3(a) or (b).

(b) For vessels less than 15 years of age, you must submit an application for an underwater survey to the OCMI at least 90 days before your vessel's next required drydock examination. The application must include—

(1) The procedure for carrying out the underwater survey;

(2) The time and place of the underwater survey;

(3) The method used to accurately determine the diver's or remotely operated vehicle's (ROV) location relative to the hull;

(4) The means for examining all through-hull fittings and appurtenances;

(5) The means for taking shaft bearing clearances;

(6) The condition of the vessel, including the anticipated draft of the vessel at the time of survey;

(7) A description of the hull protection system; and

(8) The name and qualifications of any third party examiner.

(c) If your vessel is 15 years old or older, the cognizant District Commander for the area in which the exam is being completed, may approve an underwater survey instead of a drydock examination at alternating intervals. You must submit an application for an underwater survey to the OCMI at least 90 days before your vessel's next required drydock examination. You may be allowed this option if—

(1) The vessel is qualified under paragraphs (a)(2) through (4) of this section;

(2) Your application includes the information in paragraphs (b)(1) through (b)(8) of this section; and

(3) During the vessel's drydock examination that precedes the underwater survey, a complete set of hull gaugings was taken and they indicated that the vessel was free from appreciable hull deterioration.

(d) After this drydock examination required in paragraph (c)(3) of this section, the OCMI submits a recommendation for future underwater surveys, the results of the hull gauging, and the results of the Coast Guards' drydock examination results to the cognizant District Commander for review.

6. Add § 71.50–15 to read as follows:

§ 71.50–15 Description of the Alternate Hull Examination (AHE) Program for certain passenger vessels.

The Alternative Hull Examination (AHE) Program provides you with an alternative to drydock examination by allowing your vessel's hull to be examined while it remains afloat. If completed using only divers, this program has four steps: the application process, the preliminary examination, the pre-survey meeting, and the hull examination. If a remotely operated vehicle (ROV) is used during the program the preliminary exam step may be omitted. Once you complete these steps, the Officer in Charge, Marine Inspection (OCMI), will evaluate the results and accept the examination as a credit hull exam if the vessel is in satisfactory condition. If divers are exclusively used for the underwater survey portion of the examination process, you may receive credit for a period of time such that subsequent AHEs would be conducted at intervals of twice in every five years, with no more than three years between any two AHEs. If an underwater ROV is used as the predominant method to examine the vessel's underwater hull plating, you may receive credit up to five years. At the end of this period, you may apply for further participation under the AHE Program.

Note to § 71.50–15: The expected hull coverage when using an ROV must be at least 80 percent.

7. Add § 71.50–17 to read as follows:

§ 71.50–17 Eligibility requirements for the Alternative Hull Examination (AHE) Program for certain passenger vessels.

(a) Your vessel may be eligible for the AHE Program if—

(1) It is constructed of steel or aluminum;

(2) It has an effective hull protection system;

(3) It has operated exclusively in fresh water since its last drydock examination;

(4) It operates in a reduced risk environment such as a river or the protected waters of a lake; and

(5) It operates exclusively in shallow water or within 0.5 nautical miles from shore.

(b) In addition to the requirements in paragraph (a), the Officer in Charge, Marine Inspection (OCMI), will evaluate the following information when determining your vessel's eligibility for the AHE Program:

(1) The overall condition of the vessel, based on its inspection history;

(2) The vessel's history of hull casualties and hull-related deficiencies; and

(3) The AHE Program application, as described in § 71.50–19 of this part.

(c) When reviewing a vessel's eligibility for the AHE program, the OCMI may modify the standards given by paragraph (a)(5) of this section where it is considered safe and reasonable to do so. In making this determination, the OCMI will consider the vessel's overall condition, its history of safe operation, and any other factors that serve to mitigate overall safety risks.

8. Add § 71.50–19 to read as follows:

§ 71.50–19 The Alternative Hull Examination (AHE) Program application.

If your vessel meets the eligibility criteria in § 71.50–17 of this part, you may apply to the AHE Program. You must submit an application at least 90 days before the requested hull examination date to the Officer in Charge, Marine Inspection (OCMI), who will oversee the hull examination. The application must include—

(a) The proposed time and place for conducting the hull examination;

(b) The name of the participating diving contractor and underwater remotely operated vehicle (ROV) company accepted by the OCMI under § 71.50–27 of this part;

(c) The name and qualifications of the third party examiner. This person must be familiar with the inspection procedures and his or her responsibilities under this program. The OCMI has the discretionary authority to accept or deny use of any third party examiner using the criteria established in § 71.50–1 of this part;

(d) A signed statement from your vessel's master, chief engineer, or the person in charge stating the vessel meets the eligibility criteria of § 71.50–17 of this part and a description of the vessel's overall condition, level of maintenance, known or suspected damage, underwater body cleanliness, and the anticipated draft of the vessel at the time of the examination;

(e) Plans or drawings that illustrate the external details of the hull below the sheer strake;

(f) A detailed plan for conducting the hull examination in accordance with §§ 71.50–25 and 71.50–27 of this part, which must address all safety concerns

related to the removal of sea valves during the inspection; and

(g) A preventative maintenance plan for your vessel's hull, its related systems and equipment.

9. Add § 71.50–21 to read as follows:

§ 71.50–21 Preliminary examination requirements.

(a) If you exclusively use divers to examine the underwater hull plating, you must arrange to have a preliminary examination conducted by a third party examiner, with the assistance of qualified divers. The purpose of the preliminary examination is to assess the overall condition of the vessel's hull and identify any specific concerns to be addressed during the underwater hull examination.

(b) The preliminary examination is required only upon the vessel's entry or reentry into the AHE program.

(c) If you use an underwater ROV as the predominant means to examine your vessel's hull plating, a preliminary examination and the participation of a third party examiner will not be necessary.

10. Add § 71.50–23 to read as follows:

§ 71.50–23 Pre-Survey meeting.

(a) In advance of each AHE, you must conduct a pre-survey meeting to discuss the details of the AHE procedure with the Officer in Charge, Marine Inspection (OCMI). If you exclusively use divers to examine the underwater hull plating, the third party examiner must attend the meeting and you must present the results of the preliminary examination. If you use an underwater remotely operated vehicle (ROV) as the predominant means to examine the vessel's hull plating, then the pre-survey meeting must be attended by a representative of the ROV operating company who is qualified to discuss the ROV's capabilities and limitations of your vessel's hull design and configuration.

(b) A vessel owner, operator, or designated agent must request this meeting in writing at least 30 days in advance of the examination date.

11. Add § 71.50–25 to read as follows:

§ 71.50–25 Alternative Hull Examination (AHE) procedure.

(a) To complete the underwater survey you must—

(1) Perform a general examination of the underwater hull plating and a detailed examination of all hull welds, propellers, tailshafts, rudders, and other hull appurtenances;

(2) Examine all sea chests;

(3) Remove and inspect all sea valves in the presence of a marine inspector;

(4) Remove all passengers from the vessel when the sea valves are being examined, if required by the Officer in Charge, Marine Inspection (OCMI);

(5) Allow access to all internal areas of the hull for examination, except internal tanks that carry fuel, sewage, or potable water. Internal tanks that carry fuel must be examined in accordance with § 71.53–1 of this part. Internal sewage and potable water tanks may be examined visually or by non-destructive testing to the satisfaction of the attending marine inspector; and

(6) Meet the requirements in § 71.50–27 of this part.

(b) A marine inspector may examine any other areas deemed necessary by the OCMI.

(c) If the AHE reveals significant deterioration or damage to the vessel's hull plating or structural members, the OCMI must be immediately notified. The OCMI may require the vessel be drydocked or otherwise taken out of service to further assess the extent of damage or to effect permanent repairs if the assessment or repairs cannot be completed to the satisfaction of the OCMI while the vessel is waterborne.

12. Add § 71.50–27 to read as follows:

§ 71.50–27 Alternative Hull Examination (AHE) Program options: Divers or underwater remotely operated vehicle (ROV).

To conduct the underwater survey portion of the AHE, you may use divers or an underwater ROV.

(a) If you use divers to conduct the underwater survey, you must:

(1) Locate the vessel so the divers can work safely under the vessel's keel and around both sides. The water velocity must be safe for dive operations;

(2) Provide permanent hull markings or a temporary underwater grid system to identify the diver's location with respect to the hull, within one foot of accuracy;

(3) Take ultrasonic thickness gaugings at a minimum of 5 points on each plate, evenly spaced;

(4) Take hull plating thickness gaugings along transverse belts at the bow, stern, and midships, as a minimum. Plating thickness gaugings must also be taken along a longitudinal belt at the wind and water strake. Individual gaugings along the transverse and longitudinal belts must be spaced no more than 3 feet apart;

(5) Ensure the third party examiner observes the entire underwater examination process;

(6) Record the entire underwater survey with audio and video recording equipment and ensure that communications between divers and the third party examiner are recorded; and

(7) Use appropriate equipment, such as a clear box, if underwater visibility is poor, to provide the camera with a clear view of the hull.

(b) You may use an underwater ROV to conduct the underwater survey. The underwater ROV operating team, survey process and equipment, quality assurance methods, and the content and format of the survey report must be accepted by the Officer in Charge, Marine Inspection (OCMI) prior to the survey. If you choose this option, you must—

(1) Locate the vessel to ensure that the underwater ROV can operate effectively under the vessel's keel and around all sides;

(2) Employ divers to examine any sections of the hull and appurtenances that the underwater ROV cannot access or is otherwise unable to evaluate; and

(3) If the OCMI determines that the data obtained by the ROV, including non-destructive testing results, readability of the results, and positioning standards, will not integrate into the data obtained by the divers, then a third party examiner must be present during the divers portion of the examination.

13. Add § 71.50–29 to read as follows:

§ 71.50–29 Hull examination reports.

(a) If you exclusively use divers for the underwater survey portion of the Alternate Hull Examination (AHE), you must provide the Officer in Charge, Marine Inspection (OCMI), with a written hull examination report. This report must include thickness gauging results, bearing clearances, a copy of the audio and video recordings and any other information that will help the OCMI evaluate your vessel for a drydock extension. The third party examiner must sign the report and confirm the validity of its contents.

(b) If you use an underwater ROV as the predominant means to examine the vessel's underwater hull plating, you must provide the OCMI with a report in the format that is accepted by the OCMI, per § 71.50–27(b) of this part.

(c) The OCMI will evaluate the hull examination report and grant a credit hull exam if satisfied with the condition of the vessel. If approved and you exclusively use divers to examine the hull plating, you may receive a credit hull exam up to 36 months. (Underwater examinations are required twice every 5 years). If approved and you use an underwater ROV as the predominant means to examine the underwater hull plating, you may receive a credit hull exam up to 60 months (5 years).

14. Add § 71.50–31 to read as follows:

§ 71.50–31 Continued participation in the Alternative Hull Examination (AHE) Program.

(a) If you conducted the AHE Program using divers only and want to continue to participate in the program, you must conduct an annual hull condition assessment. At a minimum, the hull condition assessment must include an internal examination and random hull gaugings taken internally. If the annual hull condition assessment reveals significant damage or corrosion, where temporary repairs have been made, or where other critical areas of concern have been identified, the Officer in Charge, Marine Inspection (OCMI) may require an expanded examination to include an underwater hull examination using divers. If an underwater examination is required, the examination must focus on areas at higher risk of damage or corrosion and must include a representative sampling of hull gaugings.

(b) If an underwater survey is required for the annual hull condition assessment, the OCMI may require the presence of a third party examiner and a written hull examination report must be submitted to the OCMI. This report must include thickness gauging results, a copy of the audio and video recordings and any other information that will help the OCMI evaluate your vessel for continued participation in the AHE program. The third party examiner must sign the report and confirm the validity of its contents.

(c) You must submit your preventive maintenance reports or checklists on an annual basis to the OCMI. These reports or checklists must conform to the plans you submitted in your application under § 71.50–19 of this part, which the OCMI approved.

(d) Prior to each scheduled annual hull condition assessment—

(1) The owner may submit to the OCMI a request for a waiver of this requirement no fewer than 30 days before the scheduled assessment; and

(2) The OCMI may reduce the scope or extend the interval of the assessment if the operational, casualty, and deficiency history of the vessel, along with a recommendation of the vessel's master, indicates that it is warranted.

PART 114—GENERAL PROVISIONS

15. The authority citation for Part 114 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3307, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46. Section 114.900 also issued under 44 U.S.C. 3507.

16. Add the following definitions to § 114.400(b) in alphabetical order:

§ 114.400 Definitions of terms used in this subchapter.

* * * * *

(b) * * *

Alternative Hull Examination (AHE) Program means a program in which an eligible vessel may receive an initial and subsequent credit hull examination through a combination of underwater surveys, internal examinations, and annual hull condition assessments.

Adequate hull protection system means a method of protecting the vessel's hull from corrosion. It includes, as a minimum, either hull coatings and a cathodic protection (CP) system consisting of zinc anodes, or an impressed current CP system.

* * * * *

Drydock examination means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings and appurtenances.

* * * * *

Internal structural examination means an examination of the vessel while afloat or in drydock and consists of a complete examination of the vessel's main strength members, including the major internal framing, the hull plating, voids, and ballast tanks, but not including cargo, sewage, or fuel oil tanks.

* * * * *

Remotely operated vehicle (ROV) team, at a minimum, consist of an ROV operator, a non-destructive testing inspector, an ROV tender or mechanic, and a team supervisor who is considered by the Officer in Charge, Marine Inspection (OCMI), have the appropriate training and experience to perform the survey and to safely operate the ROV in an effective manor. The team must also have a hull-positioning technician present. This position may be assigned to a team member already responsible for another team duty.

* * * * *

Shallow water is an ascertained water depth at which the uppermost deck(s) of a sunken vessel remain above the water's surface. The determination of the water's depth is made by the Officer in Charge, Marine Inspection (OCMI) who considers the vessel's stability (passenger heeling moment), the contour of the hull, the composition of the river bottom, and any other factors that would tend to prevent a vessel from resting an even keel.

* * * * *

Third party examiner means an entity:

(1) With a thorough knowledge of diving operations, including diving limitations as related to diver safety and diver supervision;

(2) Having a familiarity with, but not limited to, the following—

(i) The camera used during the AHE; and

(ii) The NDT equipment used during the AHE, including the effect of water clarity, and marine growth in relation to the quality of the readings obtained;

(3) Having a familiarity with the communications equipment used during the AHE;

(4) Possessing the knowledge of vessel structures, design features, nomenclature, and the applicable AHE regulations; and

(5) Able to present the Officer in Charge, Marine Inspection, with evidence of formal training, demonstrated ability, past acceptance, or a combination of these.

* * * * *

Underwater Survey in Lieu of Drydocking (UWILD) means a program in which an eligible vessel may alternate between an underwater survey and the required drydock examinations.

* * * * *

PART 115—INSPECTION AND CERTIFICATION

17. The authority citation for Part 115 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

18. In § 115.600—

a. Revise the section heading;

b. Revise paragraph (a);

c. Revise the first sentence of paragraph (b);

d. Revise the introductory text of paragraph (c); and

e. Add paragraph (e) to read as follows:

§ 115.600 Drydock examination, internal structural examination, and underwater survey intervals.

(a) The owner or managing operator shall make a vessel available for drydock examinations, internal structural examinations, and underwater surveys required by this section.

(b) If your vessel is operated on international voyages subject to SOLAS requirements, it must undergo a drydock examination once every 12 months unless it has been approved to undergo an underwater survey (UWILD) per § 115.615 of this part. * * *

(c) If your vessel is operated on other than international voyages and does not meet the conditions in paragraph (d) of

this section, it must undergo a drydock and internal structural examination as follows unless it has been approved to undergo an underwater survey (UWILD) per § 115.615 of this part:

* * * * *

(e) For a vessel that is eligible per § 115.625 of this part and the owner opts for an alternate hull examination with the underwater survey portion conducted exclusively by divers, the vessel must undergo two alternate hull exams and two internal structural exams within any five-year period. If a vessel completes a satisfactory alternate hull exam, with the underwater survey portion conducted predominantly by an approved underwater remotely operated vehicle (ROV), the vessel must undergo one alternate hull and one internal structural exam, within any five-year period. The vessel may undergo a drydock exam to satisfy any of the required alternate hull exams.

§§ 115.612, 115.630, and 115.670 [Redesignated as §§ 115.665, 115.670, and 115.675]

19. Redesignate §§ 115.612, 115.630, and 115.670 as §§ 115.665, 115.670, and 115.675, respectively.

20. Add § 115.615 to read as follows:

§ 115.615 Underwater Survey in Lieu of Drydocking (UWILD).

(a) The Officer in Charge, Marine Inspection (OCMI), may approve an underwater survey instead of a drydock examination at alternating intervals if your vessel is—

(1) Less than 15 years of age;

(2) A steel or aluminum hulled vessel;

(3) Fitted with an effective hull protection system; and

(4) Described in § 115.600(b) or (c) of this part.

(b) For vessels less than 15 years of age, you must submit an application for an underwater survey to the OCMI at least 90 days before your vessel's next required drydock examination. The application must include—

(1) The procedure for carrying out the underwater survey;

(2) The time and place of the underwater survey;

(3) The method used to accurately determine the diver's or remotely operated vehicle's (ROV) location relative to the hull;

(4) The means for examining all through-hull fittings and appurtenances;

(5) The condition of the vessel, including the anticipated draft of the vessel at the time of survey;

(6) A description of the hull protection system; and

(7) The name and qualifications of any third party examiner.

(c) If your vessel is 15 years old or older, the cognizant District Commander, may approve an underwater survey instead of a drydock examination at alternating intervals. You must submit an application for an underwater survey to the OCMI at least 90 days before your vessel's next required drydock examination. You may be allowed this option if—

(1) The vessel is qualified under paragraphs (a)(2) through (4) of this section;

(2) Your application includes the information in paragraphs (b)(1) through (b)(7) of this section; and

(3) During the vessel's drydock examination, preceding the underwater survey, a complete set of hull gaugings was taken and they indicated that the vessel was free from appreciable hull deterioration.

(d) After this drydock examination required by paragraph (c)(3) of this section, the OCMI submits a recommendation for future underwater surveys, the results of the hull gauging, and the results of the Coast Guards' drydock examination results to the District Commander for cognizant review.

21. Add § 115.620 to read as follows:

§ 115.620 Description of the Alternate Hull Examination (AHE) Program for certain passenger vessels.

The Alternate Hull Examination (AHE) Program provides you with an alternative to drydock examination by allowing your vessel's hull to be examined while it remains afloat. If completed using only divers, this program has four steps: the application process, the preliminary examination, the pre-survey meeting, and the hull examination. If a remotely operated vehicle (ROV) is used during the program the preliminary exam step may be omitted. Once you complete these steps, the Officer in Charge, Marine Inspection (OCMI) will evaluate the results and accept the examination as a credit hull exam if the vessel is in satisfactory condition. If divers are exclusively used for the underwater survey portion of the examination process, you may receive credit for a period of time such that subsequent AHEs would be conducted at intervals of twice in every five years, with no more than three years between any two AHEs. If an underwater ROV is used as the predominant method to examine the vessel's underwater hull plating, you may receive credit up to five years. At the end of this period, you may apply for further participation under the AHE Program.

22. Add § 115.625 to read as follows:

§ 115.625 Eligibility requirements for the Alternative Hull Examination (AHE) Program for certain passenger vessels.

(a) Your vessel may be eligible for the AHE Program if—

(1) It is constructed of steel or aluminum;

(2) It has an effective hull protection system;

(3) It has operated exclusively in fresh water since its last drydock examination;

(4) It operates in rivers or protected lakes; and

(5) It operates exclusively in shallow water or within 0.5 nautical miles from shore.

(b) In addition to the requirements in paragraph (a) of this section, the Officer in Charge, Marine Inspection (OCMI) will evaluate the following information when determining your vessel's eligibility for the AHE Program:

(1) The overall condition of the vessel, based on its inspection history;

(2) The vessel's history of hull casualties and hull-related deficiencies; and

(3) The AHE Program application, as described in § 115.630 of this part.

(c) When reviewing a vessel's eligibility for the AHE program, the OCMI may modify the standards given by paragraph (a)(5) of this section where it is considered safe and reasonable to do so. In making this determination, the OCMI will consider the vessel's overall condition, its history of safe operation, and any other factors that serve to mitigate overall safety risks.

23. Add § 115.630 to read as follows:

§ 115.630 The Alternative Hull Examination (AHE) Program application.

If your vessel meets the eligibility criteria in § 115.625 of this part, you may apply to the AHE Program. You must submit an application at least 90 days before the requested hull examination date to the Officer in Charge, Marine Inspection (OCMI) who will oversee the survey. The application must include—

(a) The proposed time and place for conducting the hull examination;

(b) The name of the participating diving contractor and underwater remotely operated vehicle (ROV) company which must be accepted by the OCMI under § 115.650;

(c) The name and qualifications of the third party examiner. This person must be familiar with the inspection procedures and his or her responsibilities under this program. The OCMI has the discretionary authority to accept or deny use of a particular third party examiner using the criteria established in 46 CFR 114.400;

(d) A signed statement from your vessel's master, chief engineer, or the person in charge describing the vessel's overall condition, level of maintenance, known or suspected damage, underwater body cleanliness, and the anticipated draft of the vessel at the time of the examination;

(e) Plans or drawings that illustrate the external details of the hull below the sheer strake;

(f) A detailed plan for conducting the hull examination in accordance with §§ 115.645 and 115.650 of this part, which must address all safety concerns related to the removal of sea valves during the inspection; and

(g) A preventative maintenance plan for your vessel's hull, its related systems and equipment.

24. Add § 115.635 to read as follows:

§ 115.635 Preliminary examination requirements.

(a) If you exclusively use divers to examine the underwater hull plating, you must arrange to have a preliminary examination conducted by a third party examiner, with the assistance of qualified divers. The purpose of the preliminary examination is to assess the overall condition of the vessel's hull and identify any specific concerns to be addressed during the underwater hull examination.

(b) If you use an underwater ROV as the predominate means to examine your vessel's hull plating, a preliminary examination and the participation of a third party examiner will not be necessary.

(c) The preliminary examination is required only upon the vessel's entry or review into the AHE program.

25. Add § 115.640 to read as follows:

§ 115.640 Pre-Survey meeting.

(a) You must conduct a pre-survey meeting to discuss the details of the AHE procedure with the Officer in Charge, Marine Inspection (OCMI). If you exclusively use divers to examine the underwater hull plating, the third party examiner must attend the meeting and you must present the results of the preliminary examination. If you use an underwater remotely operated vehicle (ROV) as the predominate means to examine the vessel's hull plating, then a representative of the ROV operating company must attend the pre-survey meeting and address the underwater ROV's capabilities and limitations related to your vessel's hull design and configuration.

(b) A vessel owner, operator, or designated agent must request this meeting in writing at least 30 days in advance of the examination date.

26. Add § 115.645 to read as follows:

§ 115.645 Alternative Hull Examination (AHE) Procedure.

(a) To complete the underwater survey you must—

(1) Perform a general examination of the underwater hull plating and a detailed examination of all hull welds, propellers, tailshafts, rudders, and other hull appurtenances;

(2) Examine all sea chests;

(3) Remove and inspect all sea valves in the presence of a marine inspector;

(4) Remove all passengers from the vessel when the sea valves are being examined, if required by the Officer in Charge, Marine Inspection (OCMI);

(5) Allow access to all internal areas of the hull for examination, except internal tanks that carry fuel (unless damage or deterioration is discovered or suspect), sewage, or potable water. Internal sewage and potable water tanks may be examined visually or by non-destructive testing to the satisfaction of the attending marine inspector; and

(6) Meet the requirements in § 115.650 of this part.

(b) A marine inspector may examine any other areas deemed necessary by the OCMI.

(c) If the AHE reveals significant deterioration or damage to the vessel's hull plating or structural members, the OCMI must be immediately notified. The OCMI may require the vessel be drydocked or otherwise taken out of service to further assess the extent of damage or to effect permanent repairs if the assessment or repairs cannot be completed to the satisfaction of the OCMI while the vessel is waterborne.

27. Add § 115.650 to read as follows:

§ 115.650 Alternative Hull Examination (AHE) Program options: Divers or underwater ROV.

To complete your underwater survey, you may use divers or an underwater remotely operated vehicle (ROV).

(a) If you use divers to conduct the underwater survey, you must—

(1) Locate the vessel so the divers can work safely under the vessel's keel and around both sides. The water velocity must be safe for dive operations;

(2) Provide permanent hull markings or a temporary underwater grid system to identify the diver's location with respect to the hull, within one foot of accuracy;

(3) Take ultrasonic thickness gaugings at a minimum of 5 points on each plate, evenly spaced;

(4) Take hull plating thickness gaugings along transverse belts at the bow, stern, and midships, as a minimum. Plating thickness gaugings must also be taken along a longitudinal belt at the wind and water strake. Individual gaugings along the transverse and longitudinal belts must be spaced no more than 3 feet apart;

(5) Ensure the third party examiner observes the entire underwater examination process;

(6) Record the entire underwater survey with audio and video recording equipment and ensure that communications between divers and the third party examiner are recorded; and

(7) Use appropriate equipment, such as a clear box, if underwater visibility is poor, to provide the camera with a clear view of the hull.

(b) You may use an underwater ROV to conduct the underwater survey. The underwater ROV operating team, survey process and equipment, quality assurance methods, and the content and format of the survey report must be accepted by the Officer in Charge, Marine Inspection (OCMI) prior to conducting the survey. If you choose this option, you must—

(1) Locate the vessel to ensure that the underwater ROV can operate effectively under the vessel's keel and around both sides;

(2) Employ divers to examine any sections of the hull and appurtenances that the underwater ROV cannot access or is otherwise unable to evaluate; and

(3) If the OCMI determines that the data obtained by the ROV, including non-destructive testing results, readability of the results, and positioning standards, will not integrate into the data obtained by the divers, then a third party examiner must be present during the divers portion of the examination.

28. Add § 115.655 to read as follows:

§ 115.655 Hull examination reports.

(a) If you exclusively use divers for the underwater survey portion of the AHE, you must provide the Officer in Charge, Marine Inspection (OCMI) with a written hull examination report. This report must include thickness gauging results, bearing clearances, a copy of the audio and video recordings and any other information that will help the OCMI evaluate your vessel for a drydock extension. The third party examiner must sign the report and confirm the validity of its contents.

(b) If you use an underwater remotely operated vehicle (ROV) as the predominate means to examine the vessel's underwater hull plating, you must provide the OCMI with a report in a format that is acceptable to the OCMI, per § 115.650(b) of this part.

(c) The OCMI will evaluate the hull examination report and grant a credit

hull exam if satisfied with the condition of the vessel. If approved and you exclusively use divers to examine the hull plating, you may receive a credit hull exam to 36 months. (Underwater examinations are required twice every 5 years). If approved and you use an underwater ROV as the predominant means to examine the underwater hull plating, you may receive a credit hull exam up to 60 months (5 years).

29. Add § 115.660 to read as follows:

§ 115.660 Continued participation in the Alternative Hull Examination (AHE) Program.

(a) To continue to participate in the AHE Program, you must conduct an annual hull condition assessment. At a minimum, the hull condition assessment must include an internal examination and random hull gaugings taken internally. If the annual hull condition assessment reveals significant damage or corrosion, where temporary repairs have been made, or where other critical areas of concern have been identified, the Officer in Charge, Marine Inspection (OCMI) may require an expanded examination to include an underwater hull examination using divers. If an underwater examination is required, the examination must focus on areas at higher risk of damage or corrosion and must include a representative sampling of hull gaugings.

(b) If an underwater survey is required for the annual hull condition assessment, the OCMI may require the presence of a third party examiner and a written hull examination report must be submitted to the OCMI. This report must include thickness gauging results, a copy of the audio and video recordings and any other information that will help the OCMI evaluate your vessel for continued participation in the AHE program. The third party examiner must sign the report and confirm the validity of its contents.

(c) You must submit your preventive maintenance reports or checklists on an annual basis to the OCMI. These reports or checklists must conform to the plans you submitted in your application under § 115.630 of this part, which the OCMI approved.

(d) Prior to each scheduled annual hull condition assessment—

(1) The owner may submit to the OCMI a request for a waiver of this requirement no fewer than 30 days before the scheduled assessment; and

(2) The OCMI may reduce the scope or extend the interval of the assessment if the operational, casualty, and deficiency history of the vessel, along with a recommendation of the vessel's master, indicates that it is warranted.

§ 115.665 [Amended]

30. In newly redesignated § 115.665, in paragraph (a), remove ''§ 115.600'' and add, in its place, ''§ 115.605''; and in paragraph (c), remove the words ''a drydock examination or internal structural examination'' and add, in their place, the words ''a drydock examination, internal structural examination, an underwater survey,''.

§ 115.675 [Amended]

31. In newly redesignated § 115.675, remove ''§ 115.600'' and add, in its place, ''§ 115.605''.

PART 125—GENERAL

32. The authority citation for Part 125 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3307; 49 U.S.C. App. 1804; 49 CFR 1.46.

33. Add the following definition to § 125.160 in alphabetical order:

§ 125.160 Definitions relating to hull examinations.

* * * * *

Underwater survey means the examination of the vessel's underwater hull including all through-hull fittings and appurtenances, while the vessel is afloat.

PART 126—INSPECTION AND CERTIFICATION

34. The authority citation for Part 126 continues to read as follows:

Authority: 46 U.S.C. 3205, 3306, 3307; 33 U.S.C. 1321(j); E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 793; 49 CFR 1.46.

35. In § 126.140, add paragraphs (f) and (g) to read as follows:

§ 126.140 Drydocking.

* * * * *

(f) Vessels less than 15 years of age (except wooden hull vessels) that are in salt water service with a twice in 5 year drydock interval may be considered for an underwater survey instead of alternate drydock examinations, provided the vessel is fitted with an effective hull protection system. Vessel owners or operators must apply to the Officer in Charge, Marine Inspection (OCMI), for approval of underwater surveys instead of alternate drydock examinations for each vessel. The application must include the following information:

(1) The procedure to be followed in carrying out the underwater survey;

(2) The location where the underwater survey will be accomplished;

(3) The method to be used to accurately determine the diver location relative to the hull;

(4) The means that will be provided for examining through-hull fittings;

(5) The means that will be provided for taking shaft bearing clearances;

(6) The condition of the vessel, including the anticipated draft of the vessel at the time of the survey;

(7) A description of the hull protection system; and

(8) The name and qualifications of any third party examiner.

(g) Vessels otherwise qualifying under paragraph (f) of this section, that are 15 years of age or older, may be considered for continued participation in or entry into the underwater survey program on a case-by-case basis if—

(1) Before the vessel's next scheduled drydocking, the owner or operator submits a request for participation or continued participation to the cognizant District Commander;

(2) During the vessel's next drydocking, after the request is submitted, no appreciable hull deterioration is indicated as a result of a complete set of hull gaugings; and

(3) The results of the hull gauging and the results of the Coast Guard drydock examination together with the recommendation of the OCMI, are submitted to Commandant (G–MOC) for final approval.

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

36. The authority citation for Part 167 continues to read as follows:

Authority: 46 U.S.C. 3306, 3307, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

37. Add § 167.05–40 to read as follows:

§ 167.05–40 Underwater survey.

Underwater survey means the examination of the vessel's underwater hull including all through-hull fittings and appurtenances, while the vessel is afloat.

38. In § 167.15–30, revise the section heading and paragraphs (a)(1) and (2) to read as follows:

§ 167.15–30 Drydock examination, internal structural examination, and underwater survey intervals.

(a) * * *

(1) If your vessel operates in saltwater, it must undergo two drydock examinations and two internal structural examinations within any 5-year period unless it has been approved to undergo an underwater survey (UWILD) under § 167.15–33 of this part.

No more than three years may elapse between any two examinations.

(2) If your vessel operated in fresh water at least 50 percent of the time since your last drydocking, it must undergo a dry dock and internal structural examination at intervals not to exceed 5 years unless it has been approved to undergo an underwater survey (UWILD) under § 167.15–33 of this part.

* * * * *

39. Add § 167.15–33 to read as follows:

§ 167.15–33 Underwater Survey in Lieu of Drydocking (UWILD).

(a) The Officer in Charge, Marine Inspection (OCMI), may approve an underwater survey instead of a drydock examination at alternating intervals if your vessel is—

(1) Less than 15 years of age;

(2) A steel or aluminum hulled vessel;

(3) Fitted with an effective hull protection system; and

(4) Described in 46 CFR 167.15–30(a)(1) or (2).

(b) For vessels less than 15 years of age, you must submit an application for an underwater survey to the OCMI at least 90 days before your vessel's next required drydock examination. The application must include—

(1) The procedure for carrying out the underwater survey;

(2) The time and place of the underwater survey;

(3) The method used to accurately determine the diver's or remotely operated vehicle's (ROV) location relative to the hull;

(4) The means for examining all through-hull fittings and appurtenances;

(5) The means for taking shaft bearing clearances;

(6) The condition of the vessel, including the anticipated draft of the vessel at the time of survey;

(7) A description of the hull protection system; and

(8) The name and qualifications of any third party examiner.

(c) If your vessel is 15 years old or older, the District Commander, may approve an underwater survey instead of a drydock examination at alternating intervals. You must submit an application for an underwater survey to the OCMI at least 90 days before your vessel's next required drydock examination. You may be allowed this option if—

(1) The vessel is qualified under paragraphs (a)(2) through (4) of this section;

(2) Your application includes the information in paragraphs (b)(1) through (b)(8) of this section; and

(3) During the vessel's drydock examination, preceding the underwater survey, a complete set of hull gaugings was taken and they indicated that the vessel was free from appreciable hull deterioration.

(d) After the drydock examination required in paragraph (c)(3) of this section, the Officer in Charge, Marine Inspection submits a recommendation for future underwater surveys, the results of the hull gauging, and the results of the Coast Guards' drydock examination results to the cognizant District Commander for review.

§ 167.15–35 [Amended]

40. In § 167.15–35, in paragraph (b), remove the words ''a drydock examination or internal structural examination'' and add, in their place, the words ''a drydock examination, internal structural examination, underwater survey,''; and, in paragraph (c), remove the words ''a drydock examination or internal structural examination'' and add, in their place, the words ''a drydock examination, internal structural examination, underwater survey,''.

PART 169—SAILING SCHOOL VESSELS

41. The authority citation for Part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3307, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 1.46; § 169.117 also issued under the authority of 44 U.S.C. 3507.

42. In § 169.229, revise the section heading and paragraphs (a)(1) and (2) to read as follows:

§ 169.229 Drydock examination, internal structural examination, and underwater survey intervals.

(a) * * *

(1) If your vessel operates in saltwater, it must undergo two drydock examinations and two internal structural examinations within any 5-year period unless it has been approved to undergo an underwater survey (UWILD) under § 169.230 of this part. No more than 3 years may elapse between any two examinations.

(2) If your vessel operated in fresh water at least 50 percent of the time since your last drydocking, it must undergo a dry dock and internal structural examination at intervals not to exceed 5 years unless it has been approved to undergo an underwater survey (UWILD) under § 169.230 of this part.

* * * * *

43. Add § 169.230 to read as follows:

§ 169.230 Underwater Survey in Lieu of Drydocking (UWILD).

(a) The Officer in Charge, Marine Inspection (OCMI), on a case-by-case basis, may approve an underwater survey instead of a drydock examination at alternating intervals if your vessel is—

(1) Less than 15 years of age;

(2) A steel or aluminum hulled vessel;

(3) Fitted with an effective hull protection system; and

(4) Listed in § 169.229(a)(1) or (2) of this part.

(b) For vessels less than 15 years of age, you must submit an application for an underwater survey to the OCMI at least 90 days before your vessel's next required drydock examination. The application must include—

(1) The procedure for carrying out the underwater survey;

(2) The time and place of the underwater survey;

(3) The method used to accurately determine the diver's or remotely operated vehicle's (ROV) location relative to the hull;

(4) The means for examining all through-hull fittings and appurtenances;

(5) The condition of the vessel, including the anticipated draft of the vessel at the time of survey;

(6) A description of the hull protection system; and

(7) The name and qualifications of any third party examiner.

(c) If your vessel is 15 years old or older, the cognizant District Commander, on a case-by-case basis, may approve an underwater survey instead of a drydock examination at alternating intervals. You must submit an application for an underwater survey to the OCMI at least 90 days before your vessel's next required drydock examination. You may be allowed this option if—

(1) The vessel is qualified under paragraphs (a)(2) through (4) of this section;

(2) Your application includes the information in paragraphs (b)(1) through (b)(7) of this section; and

(3) During the vessel's drydock examination, preceding the underwater survey, a complete set of hull gaugings was taken and they indicated that the vessel was free from appreciable hull deterioration.

(d) After the drydock examination required by paragraph (c)(3) of this section, the OCMI submits a recommendation for future underwater surveys, the results of the hull gauging, and the results of the Coast Guards' drydock examination results to the cognizant District Commander, for review.

44. In § 169.231, redesignate paragraph (b) as (c), and add new paragraph (b) to read as follows:

§ 169.231 Definitions relating to hull examinations.

* * * * *

(b) *Underwater survey* means the examination of the vessel's underwater hull including all through-hull fittings and appurtenances, while the vessel is afloat.

PART 175—GENERAL PROVISIONS

45. The authority citation for Part 175 continues to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3307, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; § 175.900 also issued under authority of 44 U.S.C. 3507.

46. Add the following definitions to § 175.400 in alphabetical order:

§ 175.400 Definitions of terms used in this subchapter.

* * * * *

Alternative Hull Examination (AHE) Program means a program in which an eligible vessel may receive an initial and subsequent credit hull examination through a combination of underwater surveys, internal examinations and annual hull condition assessment.

Adequate hull protection system means a method of protecting the vessel's hull from corrosion. It includes, as a minimum, either hull coatings and a cathodic protection (CP) system consisting of zinc anodes, or an impressed current CP system.

* * * * *

Drydock examination means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings and appurtenances.

* * * * *

Internal structural examination means an examination of the vessel while afloat or in drydock and consists of a complete examination of the vessel's main strength members, including the major internal framing, the hull plating, voids, and ballast tanks, but not including cargo, sewage, or fuel oil tanks.

* * * * *

Remotely operated vehicle (ROV) team, at a minimum, consist of an ROV operator, a non-destructive testing inspector, an ROV tender or mechanic, and a team supervisor who is considered by the Officer in Charge, Marine Inspection (OCMI), have the appropriate training and experience to perform the survey and to safely operate the ROV in an effective manor. The team must also have a hull-positioning technician present. This position may be assigned to a team member already responsible for another team duty.

* * * * *

Shallow water is an ascertained water depth at which the uppermost deck(s) of a sunken vessel remain above the water's surface. The determination of the water's depth is made by the Officer in Charge, Marine Inspection (OCMI) who considers the vessel's stability (passenger heeling moment), the contour of the hull, the composition of the river bottom, and any other factors that would tend to prevent a vessel from resting an even keel.

* * * * *

Third party examiner means an entity:

(1) With a thorough knowledge of diving operations, including diving limitations as related to diver safety and diver supervision;

(2) Having a familiarity with, but not limited to, the following—

(i) The camera used during the AHE; and

(ii) The NDT equipment used during the AHE, including the effect of water clarity, and marine growth in relation to the quality of the readings obtained;

(3) Having a familiarity with the communications equipment used during the AHE;

(4) Possessing the knowledge of vessel structures, design features, nomenclature, and the applicable AHE regulations; and

(5) Able to present the Officer in Charge, Marine Inspection, with evidence of formal training, demonstrated ability, past acceptance, or a combination of these.

* * * * *

Underwater Survey in Lieu of Drydocking (UWILD) means a program in which an eligible vessel may alternate between an underwater survey and the required drydock examinations.

* * * * *

PART 176—INSPECTION AND CERTIFICATION

47. The authority citation for Part 176 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

48. In § 176.600 revise the section heading, paragraph (a), the first sentence of paragraph (b), the introductory text of paragraph (c), and add paragraph (e) to read as follows:

§ 176.600 Drydock examination, internal structural examination, and underwater survey intervals.

(a) The owner or managing operator shall make a vessel available for drydock examinations, internal structural examinations, and underwater surveys (UWILD) required by this section.

(b) If your vessel is operated on international voyages subject to SOLAS requirements, it must undergo a drydock examination once every 12 months unless it has been approved to undergo an underwater survey (UWILD) per § 176.615 of this part. * * *

(c) If your vessel is not operated on international voyages and does not meet the conditions in paragraph (d) of this section, it must undergo a drydock and internal structural examination as follows unless it has been approved to undergo an underwater survey (UWILD) per § 176.615 of this part:

* * * * *

(e) For a vessel that is eligible per § 115.625, and if the owner opts for an alternate hull examination with the underwater survey portion conducted exclusively by divers, the vessel must undergo two alternate hull exams and two internal structural exams within any five-year period. If a vessel completes a satisfactory alternate hull exam, with the underwater survey portion conducted predominantly by an approved underwater remotely operated vehicle (ROV), the vessel must undergo one alternate hull and one internal structural exam, within any five-year period. The vessel may undergo a drydock exam to satisfy any of the required alternate hull exams.

§§ 176.612, 176.630, and 176.670 [Redesignated as §§ 176.665, 176.670, and 176.675]

49. Redesignate §§ 176.612, 176.630, and 176.670 as §§ 176.665, 176.670, and 176.675, respectively.

50. Add § 176.615 to read as follows:

§ 176.615 Underwater Survey in Lieu of Drydocking (UWILD).

(a) The Officer in Charge, Marine Inspection (OCMI), may approve an underwater survey instead of a drydock examination at alternating intervals if your vessel is—

(1) Less than 15 years of age;

(2) A steel or aluminum hulled vessel;

(3) Fitted with an effective hull protection system; and

(4) Described in § 176.600(b) or (c) of this part.

(b) For vessels less than 15 years of age, you must submit an application for an underwater survey to the OCMI at least 90 days before your vessel's next

required drydock examination. The application must include—

(1) The procedure for carrying out the underwater survey;

(2) The time and place of the underwater survey;

(3) The method used to accurately determine the diver's or remotely operated vehicle's (ROV) location relative to the hull;

(4) The means for examining all through-hull fittings and appurtenances;

(5) The condition of the vessel, including the anticipated draft of the vessel at the time of survey;

(6) A description of the hull protection system; and

(7) The name and qualifications of any third party examiner.

(c) If your vessel is 15 years old or older, the cognizant District Commander, may approve an underwater survey instead of a drydock examination at alternating intervals (UWILD). You must submit an application for an underwater survey to the OCMI at least 90 days before your vessel's next required drydock examination. You may be allowed this option if—

(1) The vessel is qualified under paragraphs (a)(2) through (4) of this section;

(2) Your application includes the information in paragraphs (b)(1) through (b)(7) of this section; and

(3) During the vessel's drydock examination, preceding the underwater survey, a complete set of hull gaugings was taken and they indicated that the vessel was free from appreciable hull deterioration.

(d) After the drydock examination required by paragraph (c)(3) of this section, the OCMI submits a recommendation for future underwater surveys, the results of the hull gauging, and the results of the Coast Guards' drydock examination results to the cognizant District Commander for review.

51. Add § 176.620 to read as follows:

§ 176.620 Description of the Alternative Hull Examination (AHE) Program for certain passenger vessels.

The Alternative Hull Examination (AHE) Program provides you with an alternative to drydock examination by allowing your vessel's hull to be examined while it remains afloat. If completed using only divers, this program has four steps: the application process, the preliminary examination, the pre-survey meeting, and the hull examination. If a remotely operated vehicle (ROV) is used during the program the preliminary exam step may be omitted. Once you complete these steps, the Officer in Charge, Marine Inspection (OCMI) will evaluate the results and accept the examination as a credit hull exam if the vessel is in satisfactory condition. If divers are exclusively used for the underwater survey portion of the examination process, you may receive credit for a period of time such that subsequent AHEs would be conducted at intervals of twice in every five years, with no more than three years between any two AHEs. If an underwater ROV is used as the predominant method to examine the vessel's underwater hull plating, you may receive credit up to five years. At the end of this period, you may apply for further participation under the AHE Program.

Note: The expected hull coverage when using an ROV must be at least 80 percent.

52. Add § 176.625 to read as follows:

§ 176.625 Eligibility requirements for the Alternative Hull Examination (AHE) Program for certain passenger vessels.

(a) Your vessel may be eligible for the AHE Program if—

(1) It is constructed of steel or aluminum;

(2) It has an effective hull protection system;

(3) It has operated exclusively in fresh water since its last drydock examination;

(4) It operates in rivers or protected lakes; and

(5) It operates exclusively in shallow water or within 0.5 nautical miles from shore.

(b) In addition to the requirements in paragraph (a), the Officer in Charge, Marine Inspection (OCMI) will evaluate the following information when determining your vessel's eligibility for the AHE Program:

(1) The overall condition of the vessel, based on its inspection history.

(2) The vessel's history of hull casualties and hull-related deficiencies.

(3) The AHE Program application, as described in § 176.630 of this part.

(c) When reviewing a vessel's eligibility for the AHE program, the OCMI may modify the standards given by paragraph (a)(5) of this section where it is considered safe and reasonable to do so. In making this determination, the OCMI will consider the vessel's overall condition, its history of safe operation, and any other factors that serve to mitigate overall safety risks.

53. Add § 176.630 to read as follows:

§ 176.630 The Alternative Hull Examination (AHE) Program application.

If your vessel meets the eligibility criteria in § 176.625 of this part, you may apply to the AHE Program. You must submit an application at least 90 days before the requested hull examination date to the Officer in Charge, Marine Inspection (OCMI) who will oversee the survey. The application must include—

(a) The proposed time and place for conducting the hull examination;

(b) The name of the participating diving contractor and underwater remotely operated vehicle (ROV) company accepted by the OCMI under § 176.650 of this part;

(c) The name and qualifications of the third party examiner. This person must be familiar with the inspection procedures and his or her responsibilities under this program. The OCMI has the discretionary authority to accept or deny use of a particular third party examiner;

(d) A signed statement from your vessel's master, chief engineer, or the person in charge stating the vessel meets the eligibility criteria of § 176.625 of this part and a description of the vessel's overall condition, level of maintenance, known or suspected damage, underwater body cleanliness, and the anticipated draft of the vessel at the time of the examination;

(e) Plans or drawings that illustrate the external details of the hull below the sheer strake;

(f) A detailed plan for conducting the hull examination in accordance with §§ 176.645 and 176.650 of this part, which must address all safety concerns related to the removal of sea valves during the inspection; and

(g) A preventative maintenance plan for your vessel's hull, its related systems and equipment.

54. Add § 176.635 to read as follows:

§ 176.635 Preliminary examination requirements.

(a) If you exclusively use divers to examine the underwater hull plating, you must arrange to have a preliminary examination conducted by a third party examiner, with the assistance of qualified divers. The purpose of the preliminary examination is to assess the overall condition of the vessel's hull and identify any specific concerns to be addressed during the underwater hull examination.

(b) The preliminary examination is required only upon the vessel's entry or reentry into the AHE program.

(c) If you use an underwater remotely operated vehicle (ROV) as the predominate means to examine your vessel's hull plating, a preliminary examination and the participation of a third party examiner will not be necessary.

55. Add § 176.640 to read as follows:

§ 176.640 Pre-Survey meeting.

(a) In advance of each AHE, you must conduct a pre-survey meeting to discuss the details of the AHE procedure with the Officer in Charge, Marine Inspection (OCMI). If you exclusively use divers to examine the underwater hull plating, the third party examiner must attend the meeting and you must present the results of the preliminary examination. If you use an underwater remotely operated vehicle (ROV) as the predominate means to examine the vessel's hull plating, then the pre-survey meeting must be attended by a representative of the ROV operating company who is qualified to discuss the ROV's capabilities and limitations related to your vessel's hull design and configuration.

(b) A vessel owner, operator, or designated agent must request this meeting in writing at least 30 days in advance of the examination date.

56. Add § 176.645 to read as follows:

§ 176.645 AHE Procedure.

(a) To complete the underwater survey you must—

(1) Perform a general examination of the underwater hull plating and a detailed examination of all hull welds, propellers, tailshafts, rudders, and other hull appurtenances;

(2) Examine all sea chests;

(3) Remove and inspect all sea valves in the presence of a marine inspector;

(4) Remove all passengers from the vessel when the sea valves are being examined, if required by the Officer in Charge, Marine Inspection (OCMI);

(5) Allow access to all internal areas of the hull for examination, except internal tanks that carry fuel (unless damage or deterioration is discovered or suspect), sewage, or potable water. Internal sewage and potable water tanks may be examined visually or by non-destructive testing to the satisfaction of the attending marine inspector; and

(6) Meet the requirements in § 176.650 of this part.

(b) A marine inspector may examine any other areas deemed necessary by the OCMI.

(c) If the AHE reveals significant deterioration or damage to the vessel's hull plating or structural members, the OCMI must be immediately notified. The OCMI may require the vessel be drydocked or otherwise taken out of service to further assess the extent of damage or to effect permanent repairs if the assessment or repairs cannot be completed to the satisfaction of the OCMI while the vessel is waterborne.

57. Add § 176.650 to read as follows:

§ 176.650 Alternative Hull Examination Program options: Divers or underwater ROV.

To complete the underwater survey portion of the AHE, you may use divers or an underwater remotely operated vehicle (ROV).

(a) If you use divers to conduct the underwater survey, you must—

(1) Locate the vessel so the divers can work safely under the vessel's keel and around both sides. The water velocity must be safe for dive operations;

(2) Provide permanent hull markings or a temporary underwater grid system to identify the diver's location with respect to the hull, within one foot of accuracy;

(3) Take ultrasonic thickness gaugings at a minimum of 5 points on each plate, evenly spaced;

(4) Take hull plating thickness gaugings along transverse belts at the bow, stern, and midships, as a minimum. Plating thickness gaugings must also be taken along a longitudinal belt at the wind and water strake. Individual gaugings along the transverse and longitudinal belts must be spaced no more than 3 feet apart;

(5) Ensure the third party examiner observes the entire underwater examination process;

(6) Record the entire underwater survey with audio and video recording equipment and ensure that communications between divers and the third party examiner are recorded; and

(7) Use appropriate equipment, such as a clear box, if underwater visibility is poor, to provide the camera with a clear view of the hull.

(b) You may use an underwater ROV to conduct the underwater survey. The underwater ROV operating team, survey process and equipment, quality assurance methods, and the content and format of the survey report must be accepted by the Officer in Charge, Marine Inspection (OCMI) prior to the survey. If you choose this option, you must—

(1) Locate the vessel to ensure that the underwater ROV can operate effectively under the vessel's keel and around both sides; and

(2) Employ divers to examine any sections of the hull and appurtenances that the underwater ROV cannot access or is otherwise unable to evaluate.

(3) If the OCMI determines that the data obtained by the ROV, including non-destructive testing results, readability of the results, and positioning standards, will not integrate into the data obtained by the divers, then a third party examiner must be present during the divers portion of the examination.

58. Add § 176.655 to read as follows:

§ 176.655 Hull examination reports.

(a) If you exclusively use divers for the underwater survey portion of the AHE, you must provide the Officer in Charge, Marine Inspection (OCMI) with a written hull examination report. This report must include thickness gauging results, a copy of the audio and video recordings and any other information that will help the OCMI evaluate your vessel for a drydock extension. The third party examiner must sign the report and confirm the validity of its contents.

(b) If you use an underwater remotely operated vehicle (ROV) as the predominate means to examine the vessel's underwater hull plating, you must provide the OCMI with a report in a format that is acceptable to the OCMI, per § 176.650(b) of this part.

(c) The OCMI will evaluate the hull examination report and grant a credit hull exam if satisfied with the condition of the vessel. If approved and you exclusively use divers to examine the hull plating, you will receive a credit hull exam of up to 36 months. (Underwater examinations are required twice every 5 years.) If approved and you use an underwater ROV as the predominate means to examine the hull plating, you will receive a credit hull exam of up to 60 months (5 years).

59. Add § 176.660 to read as follows:

§ 176.660 Continued participation in the Alternative Hull Examination (AHE) Program.

(a) To continue to participate in the AHE Program, you must conduct an annual hull condition assessment. At a minimum, the hull condition assessment must include an internal examination and random hull gaugings taken internally. If the annual hull condition assessment reveals significant damage or corrosion, where temporary repairs have been made, or where other critical areas of concern have been identified, the Officer in Charge, Marine Inspection (OCMI) may require an expanded examination to include an underwater hull examination using divers. If an underwater examination is required, the examination must focus on areas at higher risk of damage or corrosion and must include a representative sampling of hull gaugings.

(b) If an underwater survey is required for the annual hull condition assessment, the OCMI may require the presence of a third party examiner and a written hull examination report must be submitted to the OCMI. This report must include thickness gauging results,

a copy of the audio and video recordings and any other information that will help the OCMI evaluate your vessel for continued participation in the AHE program. The third party examiner must sign the report and confirm the validity of its contents.

(c) You must submit your preventive maintenance reports or checklists on an annual basis to the OCMI. These reports or checklists must conform to the plans you submitted in your application under § 176.630 of this part, which the OCMI approved.

(d) Prior to each scheduled annual hull condition assessment—

(1) The owner may submit to the OCMI a request for a waiver of this requirement no fewer than 30 days before the scheduled assessment; and

(2) The OCMI may reduce the scope or extend the interval of the assessment if the operational, casualty, and deficiency history of the vessel, along with a recommendation of the vessel's master, indicates that it is warranted.

§ 176.665 [Amended]

60. In newly redesignated § 176.665, in paragraph (a), remove ''§ 176.600'' and add, in its place, ''§ 176.605''; and, in paragraph (c), remove the words ''a drydock examination or internal structural examination'' and add, in their place, the words ''a drydock examination, internal structural examination, or an underwater survey,''.

§ 176.675 [Amended]

61. In newly redesignated § 176.675, remove ''§ 176.600'' and add, in its place, ''§ 176.605''.

Dated: April 12, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–9832 Filed 4–26–02; 8:45 am]

BILLING CODE 4910–15–U

Federal Register

Monday,
April 29, 2002

Part III

Department of Education

Office of Postsecondary Education—Underground Railroad Educational and Cultural Program; Notice Inviting Applications for Grants for the Underground Railroad Educational and Cultural Program for Fiscal Year (FY) 2002

DEPARTMENT OF EDUCATION

[CFDA No. 84.345A]

Office of Postsecondary Education—Underground Railroad Educational and Cultural Program; Notice Inviting Applications for Grants for the Underground Railroad Educational and Cultural Program for Fiscal Year (FY) 2002

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions you need to apply for a grant under this competition.

Purpose of Program: The Underground Railroad Educational and Cultural Program provides grants to nonprofit educational organizations that are established to research, display, interpret, and collect artifacts relating to the history of the Underground Railroad.

Eligible Applicants: Nonprofit educational organizations that are established to research, display, interpret, and collect artifacts relating to the history of the Underground Railroad.

Deadline for Transmittal of Applications: May 30, 2002.

Deadline for Intergovernmental Review: July 30, 2002.

Available Funds: $2,000,000.

Estimated Range of Awards: $100,000 to $2,000,000.

Estimated Average Size of Awards: $437,500.

Estimated Number of Awards: 1–4.

Note: The Department is not bound by any estimates in this notice.

Project Period: A maximum of three years.

Applicable Statute and Regulations: (a) The Education Department General Administrative General Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99. (b) Other required activities as required by section 841 of the Higher Education Amendments of 1998, Public Law 105–244, 20 U.S.C. 1153.

Special Requirements: Each nonprofit educational organization awarded a grant under this program must enter into an agreement with the Department. Each agreement must require the organization—

(1) To establish a facility to house, display, and interpret the artifacts related to the history of the Underground Railroad, and to make the interpretive efforts available to institutions of higher education that award a baccalaureate or graduate degree;

(2) To demonstrate substantial private support for the facility through the implementation of a public-private partnership between a State or local public entity and a private partnership between a State or local public entity and a private entity for the support of the facility. The private entity must provide matching funds for the support of the facility in an amount equal to 4 times the amount of the contribution of the State or local public entity, except that not more than 20 percent of the matching funds may be provided by the Federal Government;

(3) To create an endowment to fund any and all shortfalls in the costs of the on-going operations of the facility;

(4) To establish a network of satellite centers throughout the United States to help disseminate information regarding the Underground Railroad throughout the United States, if these satellite centers raise 80 percent of the funds required to establish the satellite centers from non-Federal public and private sources;

(5) To establish the capability to electronically link the facility with other local and regional facilities that have collections and programs that interpret the history of the Underground Railroad; and

(6) To submit, for each fiscal year for which the organization receives funding under this program, a report to the Department that contains—

(a) A description of the program and activities supported by the funding.

(b) The audited financial statement of the organization for the preceding fiscal year; A plan for the programs and activities to be supported by the funding, as the Secretary may require; and

(c) A plan for the programs and activities to be supported by the funding, as the Secretary may require; and

(d) An evaluation of the programs and activities supported by the funding, as the Secretary may require.

Selection Criteria

We will use the following selection criteria to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

Your grant application must carefully address each of the selection criteria and describe your efforts to these areas in detail.

(1) Overall Concept (20 points)

How well the facility supported by the proposed grant would effectively house, display, and interpret artifacts related to the history of the Underground Railroad and make the interpretive efforts available to institutions of higher education that award a baccalaureate or graduate degree.

(2) Public-Private Support (20 points)

How well the applicant organization demonstrates substantial private support for the facility through the implementation of a pubic-private partnership between a State or local public entity and a private entity for the support of the facility. The private entity must provide matching funds for the support of the facility in an amount equal to 4 times the amount of the contribution of the State or local public entity, except that not more than 20 percent of the matching funds may be provided by the Federal Government.

(3) Endowment (5 points)

How well the applicant organization addresses the requirement to create an endowment to fund any and all shortfalls in the costs of the on-going operations of the facility.

(4) Satellite Centers (10 points)

How well the applicant organization addresses the requirement to establish a network of satellite centers throughout the United States to disseminate information regarding the Underground Railroad and demonstrates the ability to raise 80 percent of the funds required from non-Federal public and private sources.

(5) Electronic Link (10 points)

How well the applicant Organization addresses the requirement to establish the capability to electronically link the facility with other local and regional facilities that have collections and programs which interpret the history of the Underground Railroad.

(6) Quality of Program Personnel (10 points)

The Secretary considers the quality of the personnel who will carry out the proposed program. In determining the quality of project personnel, the Secretary considers the following:

(a) The qualifications, including relevant training and experience of key personnel. (5 points)

(b) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color,

national origin, gender, age, or diability. (5 points)

(7) Quality of Management Plan (15 points)

The Secretary considers the quality of the management plan for the proposed grant program. In determining the quality of the management plan for the proposed project, the Secretary considers the following:

(a) The adequacy of the managment plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (5 points)

(b) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (5 points)

(c) How the applicant will ensure that a diversity of perspective are brought to bear in the operation of the proposed project. (5 points)

(8) Quality of Project Evaluation (10 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed program. In determining the quality of the evaluation, the Secretary considers the following:

(a) The extent to which the methods of evaluations are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (7 points)

(b) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings. (3 points)

Application Requirements (Project Narrative):

An application submitted for funding under this program must include—

(1) The name, address, and web site address, if any, of the nonprofit educational organization seeking to participate, and the name, title, mailing and e-mail address, and telephone number of a contact person for the organization.

(2) A description of the facility that will be used to house, display, and interpret the artifacts related to the history of the Underground Railroad and to make the interpretive efforts available to institutions of higher education that award a baccalaureate or graduate degree.

(3) A description of the substantial private support for the facility through the implementation of a public-private partnership between a State or local pubic entity and a private entity for the support of the facility and documentation that these entities will provide matching funds as required in section 841(b)(2) of the Higher Education Amendments of 1998.

(4) A description of how the endowment will be created to fund any and all shortfalls in the costs of the on-going operations of the facility and expected sources of these funds.

(5) A statement as to whether the applicant organization intends to establish a network of satellite centers throughout the United States and help disseminate information regarding the Underground Railroad throughout the United States. If the applicant's organization does intend to establish a network, the applicant must describe the network and document how the satellite centers will raise 80 percent of the funds required from non-Federal public and private sources.

(6) A detailed description of how the applicant intends to electronically link the facility with other local and regional facilities that have collections and programs which interpret the history of the Underground Railroad, including a listing of the facilities the applicant intends to include.

Intergovernmental Review of Federal Programs

This program is subject to Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and comply with, the States process under Executive Order 12372. If you propose to perform activities in more than one State, you should immediately contact the SPOC for each one of those States and follow the procedures established in each State under the Executive order. If you want to know the name and address of any SPOC, see the latest official SPOC list on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants/spoc.html.*

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a SPOC and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this application notice to the following address: The Secretary, E.O. 12372–CFDA# U.S. Department of Education, Room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

We will determine proof of mailing under 34 CFR 75.102 (Deadline date for applications). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that this address is not the same address as the one to which an applicant submits its completed application. Do not send applications to the above address.

Application Instructions and Forms

The Appendix to this notice contains forms and instructions, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, and various assurances and certifications. Please organize the parts and additional materials in the following order:

To apply for an award under this program competition, your application must include the following parts:

1. Application for Federal Assistance (ED Form 424 (Exp. 11/30/2004)) and instructions and definition.

2. Budget Information'Non-Construction Programs (ED Form 524) and instructions.

3. Budget Narrative.

4. Project Narrative—Applicants should submit a narrative that addresses the elements described in this notice under ''Application Requirements''.

5. Assurances and Certifications.

a. Assurances—Non Construction Programs (Standard Form 424B) (Rev. 7–97).

b. Certification regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 12/98) and instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

d. Disclosure of Lobbying Activities (Standard Form LLL (Rev. 7–97)) and instructions.

You may submit information on a photocopy of the application and budget forms, the assurances and the

certifications. However, the application form, the assurances, and the certifications must each have an original signature. We will not award a grant unless we have received a completed application form.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in this application notice.

Electronic Access To This Documents

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

You may also view this document in text at the following site: *www.ed.gov/FIPSE.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

FOR FURTHER INFORMATION CONTACT: Jay Donahue, U.S. Department of Education, 8th Floor, 1990 K Street, NW, Washington, DC 20006–8544. Telephone: (202) 502–7507 or via Internet: *Jay.Donahue@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339.

Instructions for Transmittal of Applications

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Procedure Act (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Underground Railroad Educational and Cultural Program—CFDA No. 84.345A is one of the programs included in the pilot project. If you are an applicant under the Underground Railroad Educational and Cultural Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps.

1. Print Ed 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date. You my access the electronic grant application for the Underground Railroad Educational and Cultural Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (*see* Parity Guidelines between Paper and Electronic Applications) in the application package.

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(A) *If You Send Your Application by Mail:*

You must mail the original and two copies of the application on or before the deadline date. Mail your application to: U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.345A, 7th & D Streets, SW, Room 3633, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark:

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(B) *If You Deliver Your Application by Hand:*

You or your courier must hand deliver the original and two copies of the application by 4:30p.m. (Washington, DC time) on or before the deadline date. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.345A, 7th & D Streets, SW, Room 3633, Regional Office Building 3, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(C) *If You Submit Your Application Electronically:*

You must submit your grant application through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m. (Washington, DC time) on the deadline date.

The regular hours of operation of the e-Grants Web site are 6 a.m. until 12

midnight (Washington, DC time) Monday–Friday and 6 a.m. until 7 p.m. Saturdays. The system is unavailable on the second Saturday of every month, Sundays, and Federal holidays. Please note that on Wednesdays the Web site is closed for maintenance at 7 p.m. (Washington, DC time).

Notes:

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and-if not provided by the Department-in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number-and suffix letter, if any-of the competition under which you are submitting your application.

(5) If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

Parity Guidelines Between Paper and Electronic Applications

In FY 2002, the U. S. Department of Education is continuing to expand the pilot project, which began in FY 2000, which allows applicants to use an Internet-based electronic system for submitting applications. This competition is among those that have an electronic submission option available to all applicants. The system, called e-APPLICATION, formerly e-GAPS (Electronic Grant Application System), allows an applicant to submit a grant application to us electronically, using a current version of the applicant's Internet browser. To see e-APPLICATION visit the following address: *http://e-grants.ed.gov.*

Users of e-APPLICATION, a data driven system, will be entering data on-line while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will go into a database and ultimately will be accessible in electronic form to our reviewers.

This pilot project continues the Department's transition to an electronic grant award process. In addition to e-APPLICATION, the Department plans to expand the number of discretionary programs using the electronic peer view (e-READER) system and to increase the participation of discretionary programs offering grantees the use of the electronic annual performance reporting (e-REPORTS) system. To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere to the following guidelines:

- Submit your application on 8½″ by 11″ paper.
- Leave a 1-inch margin on all sides.
- Use consistent font throughout your document. You may also use boldface type, underlining, and italics. However, please do not use colored text.
- Please use black and white, also, for illustrations, including charts, tables, graphs and pictures.
- For the narrative component, your application should consist of the number and text of each selection criterion followed by the narrative. The text of the selection criterion, if included, does not count against any page limitation.
- Place a page number at the bottom right of each page beginning with 1; and number your pages consecutively throughout your document.

Program Authority: Section 841 of the Higher Education Amendments of 1998, Pub. L. 105–244, 20 U.S.C. 1153.

Dated: April 22, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

BILLING CODE 4001–01–P

Appendix

OMB Control No. 1890-0007 (Exp. 09/30/2004)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007.** The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3). Washington, DC 20202-4248.

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number [ ][ ][ ][ ][ ][ ][ ][ ][ ]

3. Applicant's T-I-N [ ][ ] - [ ][ ][ ][ ][ ][ ][ ]

4. Catalog of Federal Domestic Assistance #: 8 4 [ ][ ][ ][ ]
Title: _____

5. Project Director: _____
Address: _____
City _____ State _____ ZIP Code + 4 _____
Tel. #: _____ Fax #: _____
E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No

7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

8. Type of Applicant (Enter appropriate letter in the box.) ☐

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:

—PreApplication
☐ Construction
☐ Non-Construction

—Application
☐ Construction
☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)

b. Title

c. Tel. #: _____ Fax #: _____

d. E-Mail Address:

e. Signature of Authorized Representative | Date: _____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE

APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity: ☐ **Prime** ☐ **Subawardee** Tier _____, *if known*: **Congressional District**, *if known*:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

[FR Doc. 02–10367 Filed 4–26–02; 8:45 am]

BILLING CODE 4000–01–C

Federal Register

Monday,
April 29, 2002

Part IV

Department of the Treasury

31 CFR Part 103

Financial Crimes Enforcement Network; Anti-Money Laundering Programs; Final Rules

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA28

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Financial Institutions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Interim final rule.

SUMMARY: FinCEN is issuing a series of interim final rules to provide guidance to financial institutions concerning the provision in the Bank Secrecy Act (BSA), added by section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, that requires financial institutions to establish anti-money laundering programs. This interim final rule provides that banks, savings associations, credit unions, registered brokers and dealers in securities, futures commission merchants, and casinos, will be deemed to be in compliance with section 352 if they establish and maintain anti-money laundering programs as required by existing FinCEN regulations, or their respective Federal regulator or self-regulatory organization. The establishment of anti-money laundering programs by money services businesses, operators of credit card systems, and mutual funds are the subject of separate rules published in this separate part of this issue of the **Federal Register**. This rule temporarily exempts, pending further analysis and review by Treasury and FinCEN, all other financial institutions (as defined in the BSA) from the requirement in section 352 that they establish anti-money laundering programs.

DATES: This interim final rule is effective April 24, 2002. Written comments may be submitted to FinCEN on or before May 29, 2002.

ADDRESSES: Submit comments (preferably an original and four copies) to FinCEN, P.O. Box 39, Vienna, VA 22183, Attn: Section 352 AMLP Regulations. Comments may also be submitted by electronic mail to *regcomments@fincen.treas.gov* with the caption in the body of the text, ''Attention: Section 352 AMLP Regulations.'' Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the USA PATRIOT Act (Public Law 107–56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the BSA, which is codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to make it easier to prevent, detect, and prosecute international money laundering and the financing of terrorism. Section 352(a) of the Act, which becomes effective on April 24, 2002, amended section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that includes, at a minimum (i) the development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs.

The definition of ''financial institution'' in sections 5312(a)(2) and (c)(1) is extremely broad. It includes institutions that are already subject to Federal regulation such as banks, savings associations, credit unions, money services businesses (such as money transmitters and currency exchanges), and registered securities broker-dealers and futures commission merchants. The definition also includes dealers in precious metals, stones, or jewels; pawnbrokers; loan or finance companies; private bankers; insurance companies; travel agencies; telegraph companies; sellers of vehicles, including automobiles, airplanes, and boats; persons engaged in real estate closings and settlements; investment bankers; investment companies; and commodity pool operators and commodity trading advisors that are registered or required to register under the Commodity Exchange Act (7 U.S.C. 1 et seq). Section 5318(h)(1) requires all of these businesses to establish anti-money laundering programs.

Section 5318(h)(2) authorizes Treasury, after consulting with the appropriate Federal functional regulator,[1] to prescribe minimum standards for anti-money laundering programs. This section also authorizes Treasury to exempt from the application of those minimum standards any financial institution that is not subject to the rules implementing the BSA for so long as it is not subject to such rules. Section 352(c) of the Act directs the Secretary of the Treasury to prescribe regulations by April 24, 2002 that ''consider the extent to which [the requirements of section 5318(h)(1)] are commensurate with the size, location, and activities'' of financial institutions. BSA section 5318(a)(6) provides that the Secretary may exempt any financial institution from any BSA statutory requirement. Taken together, these provisions authorize the issuance of regulations that may prescribe different requirements for anti-money laundering programs under, and that may exempt certain financial institutions from the requirements of, section 5318(h)(1).

Accordingly, and as described below, this interim final rule prescribes anti-money laundering program requirements for banks, savings associations, registered brokers and dealers in securities, futures commission merchants, and casinos. The establishment of anti-money laundering programs by money services businesses, operators of credit card systems, and mutual funds are the subject of interim final rules published in this separate part of this issue of the **Federal Register**. Thus, by virtue of the interim final rules published today, all financial institutions presently subject to FinCEN's existing BSA regulations are now subject to anti-money laundering program requirements, as are three new types of financial institutions not previously regulated under the BSA: futures commission merchants, mutual funds, and operators of credit card systems.

In order to ensure the issuance of well-considered regulations tailored to the unique money laundering risks associated with the remaining financial institutions, this rule temporarily exempts, until not later than October 24, 2002, all other financial institutions from the requirement that they establish anti-money laundering programs. During the next six months Treasury

[1] These are defined by reference to section 509 of the Gramm-Leach-Bliley Act (Public Law 106–102) to include the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), the Board of Directors of the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), and the Securities and Exchange Commission (SEC), and, pursuant to section 321(c) of the Act, the Commodity Futures Trading Commission (CFTC).

and FinCEN will continue studying the money laundering risks posed by these institutions in order to develop appropriate anti-money laundering program requirements. During this period, Treasury and FinCEN expect to issue a series of regulations, focusing first on those exempted financial institutions that appear to pose the greatest potential for money laundering, that will further define the exempted financial institutions and delineate minimum standards for their anti-money laundering programs.

II. Analysis of the Interim Final Rule

A. Banks, Savings Associations, and Credit Unions

Following the enactment of the Act, Treasury established a working group that includes representatives of the Federal functional regulators and the Department of Justice to assist in implementing section 352 of the Act and in determining the appropriate minimum standards for anti-money laundering programs for financial institutions regulated by a Federal functional regulator. Certain financial institutions are already required to have anti-money laundering programs. Since 1987, all federally insured depository institutions and credit unions have been required by their federal regulators to have anti-money laundering programs. These programs contain the same elements that are required by section 5318(h)(1). [2] Accordingly, section 103.120(b) provides that a financial institution that is subject to regulation by a Federal functional regulator will be deemed to be in compliance with the requirements of section 5318(h)(1) if it complies with the regulations of its regulator governing the establishment and maintenance of anti-money laundering programs. Examination of these financial institutions by their Federal functional regulators will continue to ensure compliance with those regulations.

B. Registered Securities Broker-Dealers and Futures Commission Merchants

Similarly, Treasury and FinCEN also believe it is appropriate to implement section 5318(h)(1) with respect to registered securities brokers and dealers and to futures commission merchants through their respective self-regulatory organizations (SROs). Indeed, the initiative demonstrated by the SEC, CFTC and their SROs in advancing anti-money laundering programs has significantly accelerated the implementation of section 352. Accordingly, section 103.120(c) provides that a registered securities broker-dealer or a futures commission merchant will be deemed in compliance with the requirements of section 5318(h)(1) if it complies with the rules, regulations, or requirements of its SRO concerning the establishment and maintenance of anti-money laundering programs.

Following consultation between Treasury and the SEC, the two principal securities industry SROs [3] have each adopted a rule requiring their members to implement anti-money laundering programs.[4] These rules, which incorporate the requirements of section 5318(h)(1), apply to essentially all securities broker-dealers that do business with the public and were approved by the SEC on April 22, 2002 (see Securities Exchange Act Release No. 45798).

The SROs will examine their members for compliance with these requirements and take appropriate enforcement action in cases of noncompliance. In addition, the SEC has authority to examine registered broker-dealers for compliance with these, as well as all other SRO rules. Utilizing the examination, enforcement, and outreach capabilities of the SROs and the SEC is an effective means to ensure meaningful compliance with the anti-money laundering program requirement, and is consistent with the objectives of section 352 of the Act. However, in the unlikely event that Treasury were to determine it necessary, Treasury specifically reserves its right to issue regulations prescribing minimum standards under section 352 for securities brokers and dealers.

Treasury and FinCEN, in consultation with the CFTC, are implementing section 5318(h)(1) with respect to the futures industry in a similar manner. The National Futures Association (NFA), which is the futures industry SRO whose members include all registered futures commission merchants, empowered its Executive Committee on February 21, 2002 to develop and adopt a rule requiring all futures commission merchants and introducing broker members [5] to establish anti-money laundering programs that satisfy the requirements of section 5318(h)(1). The CFTC approved this rule on April 23, 2002. The NFA will examine its members for compliance with this requirement and take enforcement actions in cases of noncompliance. The CFTC, in turn, will examine the NFA for its enforcement of the anti-money laundering program rule and take enforcement action against the NFA in cases of non-enforcement. As with securities brokers and dealers, Treasury reserves its right to issue regulations prescribing minimum standards for futures commission merchants should it be deemed necessary.

C. Casinos

In 1993, FinCEN issued regulations requiring casinos to establish written anti-money laundering compliance programs.[6] Each compliance program must include internal controls to assure ongoing compliance, internal or external independent testing for compliance, training for casino personnel, and one or more compliance officers. In addition, casinos that have automated data processing systems are required to use automated programs to aid in assuring compliance. Accordingly, section 103.120(d) provides that a casino that is in compliance with these regulations will be deemed to be in compliance with the requirements of section 5318(h)(1).

D. Money Services Businesses, Mutual Funds, Operators of Credit Card Systems

Anti-money laundering program requirements for money services businesses, mutual funds, and operators of credit card systems are described in separate interim final rules published in this separate part of this issue of the **Federal Register**.

E. All Other BSA Financial Institutions

Treasury and FinCEN are exercising the authority under BSA section 5318(a)(6) to temporarily exempt all other financial institutions from the requirement in section 5318(h)(1) that they establish anti-money laundering programs. The temporary exemption in section 103.170 applies to dealers in precious metals, stones, or jewels; pawnbrokers; loan or finance

[2] 12 CFR 21.21 (OCC); 12 CFR 208.63 (FRB); 12 CFR 326.8 (FDIC); 12 CFR 563.177 (OTS); 12 CFR 748.2 (NCUA).

[3] The National Association of Securities Dealers (NASD) and the New York Stock Exchange (NYSE).

[4] See 67 FR 8565 and 8567 (Feb. 25, 2002).

[5] ''Introducing brokers'' (defined in section 1a(23) of the Commodity Exchange Act (7 U.S.C. 1a(23))) play a crucial role in preventing money laundering in the futures industry. BSA section 5312(a)(2)(H) defines ''financial institution'' to include ''a broker or dealer in securities or commodities,'' and Treasury believes that introducing brokers are included within this definition. Accordingly, NFA has included introducing brokers in its anti-money laundering program requirement. Sections 5312(a)(2)(Y) and (Z) authorize Treasury to include additional businesses within the BSA's definition of financial institution. Treasury is considering whether it is necessary to clarify formally that section 5312(a)(2)(H) includes ''introducing brokers'' within the definition of ''financial institution.''

[6] 31 CFR 103.64.

companies; private bankers; insurance companies; travel agencies; telegraph companies; sellers of vehicles, including automobiles, airplanes, and boats; persons engaged in real estate closings and settlements; certain investment companies [7]; commodity pool operators; and commodity trading advisors. The exemption does not extend to ''investment bankers'' because all such entities are either depository institutions or securities broker-dealers that are subject to anti-money laundering program requirements by section 103.120(b) or (c), respectively. [8]

The need for the temporary exemption is a practical one. First, although included within the list of financial institutions in the BSA, these businesses have never been defined for purposes of the BSA. For example, does a ''dealer in precious metals, stones, or jewels'' include a jewelry counter at a department store and a kiosk in a shopping mall that sells gold and silver earrings, bracelets, and necklaces, as well as a diamond merchant? Similarly, does ''a business engaged in ''vehicle sales, including automobile, airplane, and boat sales '' include businesses selling motorcycles, motorbikes, or snowmobiles? Treasury and FinCEN do not believe it is sound regulatory policy to subject the broad categories of BSA ''financial institutions'' to the requirements of BSA section 5318(h)(1) without specifically defining the businesses that will be subject to those requirements. Second, in the six months since the enactment of the Act, Treasury and FinCEN have not had sufficient time and opportunity to analyze the nature of the businesses of the remaining financial institutions. More importantly, Treasury and FinCEN have not had the opportunity to identify the nature and scope of the money laundering or terrorist financing risks associated with these businesses. The extension of the anti-money laundering program requirement to all the remaining financial institutions, most of which have never been subject to federal financial regulation, raises many significant practical and policy issues. An inadequate understanding of the affected industries could result in poorly conceived regulations that impose unreasonable regulatory burdens with little or no corresponding anti-money laundering benefits. Finally, Treasury and FinCEN are aware that many of these financial institutions are sole proprietors or small businesses, and that any regulations affecting them must recognize this fact.

For these reasons, Treasury and FinCEN believe that a temporary exemption from the requirements of section 5318(h)(1) is appropriate at this time. During the next six months, Treasury and FinCEN will review and analyze the extent to which these businesses may be used by money launderers or terrorist financiers, and will issue a series of additional rules requiring that they establish anti-money laundering programs where appropriate, and delineating minimum standards for those programs. Treasury and FinCEN have been examining the money laundering risks associated with insurance products and will issue in the near future a proposed rule governing the establishment of anti-money laundering programs by insurance companies. Although Treasury and FinCEN intend to issue regulations addressing anti-money laundering programs for all exempted financial institutions by October 24, 2002, any category of financial institution for which regulations have not been proposed or promulgated by that date will be required to establish anti-money laundering programs that comply with the requirements of 31 U.S.C. 5318(h)(1).

Treasury and FinCEN emphasize that the exemption from the requirement to establish anti-money laundering programs does not in any way relieve any business from the existing requirements in 31 U.S.C. 5331 and 26 U.S.C. 6050I that they report transactions in cash or currency, or certain monetary instruments, that exceed $10,000. The regulations under these sections are codified at 31 CFR 103.30 and 26 CFR 1.6050I, respectively. Every temporarily exempted business must ensure that it has appropriate procedures to report such transactions to FinCEN and the IRS using the single Form 8300 jointly prescribed by those agencies. In addition, all financial institutions are reminded of the importance of reporting suspected terrorist activities or otherwise suspicious transactions to the appropriate law enforcement authorities. Form 8300 contains a check box to indicate that a particular transaction, whether or not required to be reported, otherwise appears suspicious.

III. Administrative Procedure Act

The provisions of 31 U.S.C. 5318(h)(1), requiring all financial institutions to establish anti-money laundering programs with at least four identified elements, become effective April 24, 2002. This interim rule exempts certain financial institutions from these requirements and deems other financial institutions to be in compliance with these requirements. Accordingly, good cause is found to dispense with notice and public procedure as unnecessary pursuant to 5 U.S.C. 553(b)(B), and to make the provisions of the interim rule effective in less than 30 days pursuant to 5 U.S.C. 553(d)(1) and (3).

IV. Regulatory Flexibility Act

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

V. Executive Order 12866

This interim final rule is not a ''significant regulatory action'' as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

List of Subjects in 31 CFR Part 103

Banks, banking, Brokers, Counter money laundering, Counter-terrorism,

[7] The principal statute governing investment companies is the Investment Company Act of 1940 (codified at 15 U.S.C. 80a1–80a64) (the 1940 Act), which defines investment company broadly. However, entities commonly known as hedge funds, private equity funds and venture capital funds are specifically excluded from the definition of investment company for purposes of the 1940 Act. Section 356 of the USA PATRIOT Act requires that the Treasury, the Federal Reserve, and the SEC submit a joint report to Congress, not later than October 26, 2002, on recommendations for effective regulations to apply the requirements of the BSA to investment companies, including persons that, but for the noted exceptions, would be investment companies. Treasury anticipates that the CFTC will participate in ;the development of this report because a significant percentage of hedge funds are registered and regulated as commodity pool operators. Section 356 also requires that the report include recommendations whether personal holding companies should be treated as investment companies under the BSA. Pending further review and analysis, Treasury is temporarily exempting investment companies, other than ''open-end companies'' (as defined in section 5(a)(1) of the 1940 Act), from the requirements of BSA section 5318(h)(1). The applicability of these requirements to ''open-end companies'' is addressed in the interim final rule concerning mutual funds published in this separate part of this issue of the **Federal Register.** Pending further review and analysis, Treasury is also deferring determination of the scope of the BSA definition of ''investment company,'' but anticipates that it is likely that the referenced entities excluded from application ;of the 1940 Act will be subject to anti-money laundering program requirements.

[8] *See* Davenport Management, Inc. 1993 SEC No-Act. Lexis 624 (April 13, 1993) (stating that a corporation would be required to register as a broker-dealer if it acted as an intermediary in securities transactions, negotiated the terms of securities transactions, received transaction-based compensation, had direct contact with outside investors, and provided ''investment banking services''); See also Securities Exchange Act Release No. 11742 (October 5, 1975) (noting that a bank might be subject to registration as a municipal securities dealer if it engages in underwriting or otherwise holds itself out as a dealer).

Currency, Foreign banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth above, FinCEN is amending 31 CFR Part 103 as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5331; title III, secs. 314, 352, Pub. L. 107–56, 115 Stat. 307.

2. Add new subpart I to part 103 to read as follows:

Subpart I—Anti-Money Laundering Programs

Sec.
103.120 Anti-money laundering program requirements for financial institutions regulated by a Federal functional regulator or a self-regulatory organization, and casinos.
103.125 [Reserved]
103.130 [Reserved]
103.135 [Reserved]
103.170 Deferred anti-money laundering programs for certain financial institutions.

Subpart I—Anti-Money Laundering Programs

§ 103.120 Anti-money laundering program requirements for financial institutions regulated by a Federal functional regulator or a self-regulatory organization, and casinos.

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

(1) *Financial institution* means a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1) that is subject to regulation by a Federal functional regulator or a self-regulatory organization.

(2) *Federal functional regulator* means:

(i) The Board of Governors of the Federal Reserve System;

(ii) The Office of the Comptroller of the Currency;

(iii) The Board of Directors of the Federal Deposit Insurance Corporation;

(iv) The Office of Thrift Supervision;

(v) The National Credit Union Administration;

(vi) The Securities and Exchange Commission; or

(vii) The Commodity Futures Trading Commission.

(3) *Self-regulatory organization:*

(i) Shall have the same meaning as provided in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)); and

(ii) Means a ''registered entity'' or a ''registered futures association'' as provided in section 1a(29) or 17, respectively, of the Commodity Exchange Act (7 U.S.C. 1a(29), 21).

(4) *Casino* has the same meaning as provided in § 103.11(n)(5).

(b) *Requirements for financial institutions regulated only by a Federal functional regulator, including banks, savings associations, and credit unions.* A financial institution regulated by a Federal functional regulator that is not subject to the regulations of a self regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if it implements and maintains an anti-money laundering program that complies with the regulation of its Federal functional regulator governing such programs.

(c) *Requirements for financial institutions regulated by a self-regulatory organization, including registered securities broker-dealers and futures commission merchants.* A financial institution regulated by a self-regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if:

(1) The financial institution complies with any applicable regulation of its Federal functional regulator governing the establishment and implementation of anti-money laundering programs; and

(2)(i) The financial institution implements and maintains an anti-money laundering program that complies with the rules, regulations, or requirements of its self-regulatory organization governing such programs; and

(ii) The rules, regulations, or requirements of the self-regulatory organization have been approved, if required, by the appropriate Federal functional regulator.

(d) *Requirements for casinos.* A casino shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if it implements and maintains a compliance program described in § 103.64.

§ 103.125 [Reserved]

§ 103.130 [Reserved]

§ 103.135 [Reserved]

§ 103.170 Deferred anti-money laundering programs for certain financial institutions.

(a) *Exempt financial institutions.* Subject to the provisions of paragraph (b) of this section, the following financial institutions (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) are exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs:

(1) An agency of the United States Government, or of a State or local government, carrying out a duty or power of a business described in 31 U.S.C. 5312(a)(2); and

(2) Any of the following businesses or activities that is not described in § 103.120(b) or (c), or subject to the requirements of § 103.125 or § 103.130:

(i) Dealer in precious metals, stones, or jewels;

(ii) Pawnbroker;

(iii) Loan or finance company;

(iv) Travel agency;

(v) Telegraph company;

(vi) Seller of vehicles, including automobiles, airplanes, and boats;

(vii) Persons involved real estate closings and settlements;

(viii) Private banker;

(ix) Insurance company;

(x) Commodity pool operator;

(xi) Commodity trading advisor; or

(xii) Investment company.

(b) *Termination of exemption.* (1) *In general.* Subject to paragraph (b)(2) of this section, a financial institution described in paragraph (a)(2) of this section shall, effective October 24, 2002, establish and maintain an anti-money laundering program as required by 31 U.S.C. 5318(h)(1).

(2) *Exception.* The provisions of paragraph (b)(1) of this section shall not apply to any financial institution to the extent:

(i) Provided in guidance issued in a document published in the **Federal Register** by the Department of the Treasury (including FinCEN) on or before October 24, 2002, governing the application of 31 U.S.C. 5318(h)(1) to such financial institution; or

(ii) That the Secretary determines that the application of any or all of the requirements of 31 U.S.C. 5318(h)(1) to such financial institution is unnecessary or should continue to be deferred pending further analysis and review.

(c) *Compliance obligations of deferred financial institutions.* Nothing in this section shall be deemed to relieve an exempt financial institution from its responsibility to comply with the applicable requirements of law concerning the reporting of certain transactions in cash, currency, or monetary instruments in accordance with § 103.30 or 26 CFR 1.6050I.

Dated: April 23, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–10452 Filed 4–24–02; 4:09 pm]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA28

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Money Services Businesses

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Interim final rule.

SUMMARY: FinCEN is issuing this interim final rule to prescribe minimum standards applicable to money services businesses pursuant to the revised provision of the Bank Secrecy Act that requires financial institutions to establish anti-money laundering programs.

DATES: This interim final rule is effective April 24, 2002. Written comments may be submitted to FinCEN on or before May 29, 2002.

ADDRESSES: Submit comments (preferably an original and four copies) to FinCEN, P.O. Box 39, Vienna, VA 22183, ATTN: Section 352 MSB Regulations. Comments may also be submitted by electronic mail to *regcomments@fincen.treas.gov* with the caption in the body of the text, ''Attention: Section 352 MSB Regulations.'' Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which is codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to provide additional tools to prevent, detect, and prosecute international money laundering and the financing of terrorism. Section 352(a) of the Act, which becomes effective on April 24, 2002, amended section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that includes, at a minimum, (i) the development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. The statute further permits the Secretary to exempt from this requirement those financial institutions not currently subject to Treasury's regulations implementing the BSA. In addition, Section 352(c) directs the Secretary to prescribe regulations by April 24, 2002, for anti-money laundering programs that are ''commensurate with the size, location, and activities'' of the financial institutions to which such regulations apply.

Money services businesses are defined as financial institutions under the BSA and are subject to registration, recordkeeping, and reporting obligations under the implementing regulations. They thus fall within the category of financial institutions to which Congress intended to apply the anti-money laundering program requirements. [1] Requiring money services businesses to implement anti-money laundering programs should enhance their ability to comply with their BSA obligations. This interim final rule prescribes minimum standards for anti-money laundering programs for money services businesses, tailored to the particular circumstances of their industry.

In requiring money services businesses to register with the Department of the Treasury, Congress recognized that money services businesses, like depository institutions, are subject to abuse by money launderers.[2] Following up on this finding, along with issuing regulations implementing the registration requirement, Treasury and FinCEN also issued regulations requiring money services businesses (with the exception of currency dealers or exchangers, check cashers, and issuers, sellers, and redeemers of stored value) to report to FinCEN suspicious activity occurring after December 31, 2001.[3] As Treasury and FinCEN acknowledged in promulgating these regulations, implementation of a comprehensive counter-money laundering strategy for this category of financial institution raises significant issues not present for depository institutions subject to the BSA such as banks because of a number of unique factors affecting the money services business industry.[4]

The money services businesses category of financial institutions subject to Part 103 includes a variety of non-bank financial institutions: currency dealers or exchangers; check cashers; issuers of traveler's checks, money orders, or stored value; sellers or redeemers of traveler's checks, money orders, or stored value; and money transmitters.[5] The size and complexity of money services business enterprises range from the small and simple to the very large and complex; structures include sole proprietorships, partnerships, and corporations. Money services business enterprises range from small ''mom and pop'' operations based in one location to large, well capitalized firms that trade on major securities exchanges, enterprises with numerous branches or large agent networks, and also include the United States Postal Service. For some enterprises, such as grocery stores, convenience stores, and gas stations, the financial activities that make them money services businesses are not their core business activities but only incidental services offered along with core products and services. Other money services businesses are organized to provide several financial services to their customers similar to the full range of financial products provided by a bank. Issuers of traveler's checks, issuers of money orders, and primary money transmitter companies often operate through networks of independent enterprises that serve as distribution points throughout the country or the world. These agent networks make up the bulk of the sellers of traveler's checks and money orders and distributors of money transfer services in the United States.[6]

The interim final rule requires each money services business to establish a program reasonably designed to prevent

[1] Although Section 5318(a)(6) authorizes the Secretary to exempt any financial institution from any BSA requirement, in light of the vulnerability of the industry to money laundering described infra and the extent of existing BSA regulation of money services businesses, the Secretary is declining to exempt money services businesses from the anti-money laundering program requirement.

[2] Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325 (September 23, 1994). Treasury's implementing regulations required all money services businesses to register with FinCEN by December 31, 2001. See 31 CFR 103.41(f).

[3] 31 CFR 103.20(f).

[4] *See* 62 FR 27903 (May 21, 1997).

[5] *See* 31 CFR 103.11uu(1)–(6).

[6] *See* 62 FR 27891–895 (May 21, 1997).

its use in money laundering or terrorist financing. Treasury and FinCEN have determined that the exact nature of an effective anti-money laundering program for money services businesses must be commensurate with the risks posed by the size and location of the particular money services business, and the nature and volume of the financial services it offers. Critical components of such a program are procedures for assuring that applicable customer identification requirements are met, all reports required under 31 CFR part 103, including but not limited to reports of suspicious transactions, are filed in a timely fashion, all required records are maintained in complete and accurate form, and requests for information from law enforcement agencies are handled with appropriate speed. The interim final rule mandates certain methods to attain such regulatory compliance, including documentation of policies, procedures, and internal controls, training, designation of a compliance officer, and program review. Finally, in addition to compliance with mandatory regulatory requirements, Treasury and FinCEN encourage money services businesses to implement procedures for voluntarily reporting suspected terrorist activity to FinCEN using its Financial Institutions Hotline (1–866–556–3974).

II. Analysis of the Interim Final Rule

Section 103.125(a) requires each money services business to have an effective anti-money laundering program, which is defined as a program reasonably designed to prevent the money services business from being used to facilitate money laundering or to finance terrorist activities. Section 103.125(b) provides that the program is to be commensurate with the risks posed by the financial services provided by the money services business, in light of their nature and volume, and the location and size of the money services business. Section 103.125(c) provides that each money services business must have a written anti-money laundering program.

Section 103.125(d) sets forth the minimum requirements for an effective anti-money laundering program. First, § 103.125(d)(1) provides that such a program must contain policies, procedures, and internal controls reasonably designed to ensure compliance with the applicable requirements of 31 CFR part 103, including recordkeeping, reporting, verifying customer identification, and responding to law enforcement requests. In addition, money services businesses that have automated data processing systems should integrate into their systems compliance procedures such as recordkeeping and monitoring transactions subject to reporting requirements.

In recognition of the fact that a number of issuers of money services instruments such as traveler's checks and money orders sell their products through other money services businesses, § 103.125(d)(1)(iii) permits such issuers and sellers to allocate responsibility for developing written policies, procedures, and internal controls among themselves. However, responsibility for implementation of the policies, procedures, and internal controls rests with each money services business, and, particularly with respect to internal controls, a money services business needs to be vigilant in ensuring that such controls are effective in the circumstances under which it operates.[7] This section also makes clear that a money services business may not contract away its responsibility to establish and maintain an effective anti-money laundering program.

In addition, § 103.125(d)(2) requires each money services business to designate a person or persons to be responsible for the program, i.e., a compliance officer. The compliance officer shall be responsible for day to day compliance with 31 CFR Part 103, ensuring the compliance program is updated as necessary and reflects current Treasury guidance, and overseeing the money services business's education and training program.

Section 103.125(d)(3) provides that each money services business must have an ongoing training or education program for employees concerning their responsibilities under the program and 31 CFR Part 103, including training in the detection of suspicious activities. Finally, under § 103.125(d)(4), each money services business must provide for an independent review of the program on a periodic basis. The independent review may be performed by an employee of the money services business, so long as the reviewer is not the compliance officer.

The interim final rule is designed to give money services businesses flexibility to tailor their programs to their specific circumstances so long as the minimum requirements are met. For example, the program for a money services business that provides a full range of financial services (e.g., check cashing, currency exchange, money order sales, money transmission services) from multiple branches would be structured differently than a program for a money services business that offers one or two services through an agent network. The educational component for an enterprise that offers multiple financial services may require more comprehensive training for employees to recognize aspects of suspicious activity associated with different transaction types and may differ based on the geographic location of the branches. An enterprise with multiple locations that offers multiple financial services may require more extensive oversight by its compliance officer than would an enterprise that offers one or two financial services incidental to its core business in isolated transactions. The former would also require more frequent independent review.

The interim final rule also permits programs to be tailored to the specific risks associated with the different financial services offered by money services businesses. For example, sales of traveler's checks, money orders, and money transfers may be particularly vulnerable to structuring—that is, the breaking up of a transaction into multiple transactions so as to fall beneath the thresholds for recordkeeping and reporting. [8] An appropriate anti-money laundering program for such an enterprise would include the training of employees to recognize indications of structuring.

FinCEN intends to issue guidance to assist money services businesses in complying with the interim final rule. Such guidance will be posted on the FinCEN web site dedicated to money services businesses (*www.msb.gov*).

III. Implementation Date Requirements

Pursuant to section 103.125(e), an existing money services business is required to comply with the anti-money laundering program requirements of 31 CFR 103.125 by July 24, 2002. Money services businesses coming into existence after that date must develop and implement such a program on or before the later of July 24, 2002, and the end of the 90-day period beginning on the day following the date the business is established.

IV. Administrative Procedure Act

The provisions of 31 U.S.C. 5318(h)(1), requiring all financial institutions to establish anti-money laundering programs with at least four identified elements, become effective

[7] For example, a money services business that offers products from different issuers must ensure that its internal controls are effective for all the products it offers, and not just blindly adopt controls generated by the issuer of one of the products it sells, which may not be applicable to its other products.

[8] See 62 FR 27911 (May 21, 1997).

April 24, 2002. This interim rule provides guidance to money services businesses on how to comply with the law in effect on that date and does not impose any obligation on any financial institution that is not required by section 352 of the Act. Accordingly, good cause is found to dispense with notice and public procedure as unnecessary pursuant to 5 U.S.C. 553(b)(B), and to make the provisions of the interim rule effective in less than 30 days pursuant to 5 U.S.C. 553(d)(1) and (3).

V. Regulatory Flexibility Act

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

VI. Executive Order 12866

This interim final rule is not a ''significant regulatory action'' as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

VII. Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this interim final rule has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1506–0020. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Comments concerning the collection of information should be sent to the Office of Management and Budget, ATTN: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503, with copies to FinCEN at Department of the Treasury, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, Virginia, 22183.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this interim final rule is in 31 CFR 103.125(c). The information will be used by federal agencies to verify compliance by money services businesses with the provisions of 31 CFR 103.125. The collection of information is mandatory. The likely recordkeepers are businesses.

In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 103.125(c) is presented to assist those persons wishing to comment on the information collection.

Description of Recordkeepers: Money services businesses as defined in 31 CFR 103.11(uu).

Estimated Number of Recordkeepers: 200,000.

Estimated Average Annual Burden Hours Per Recordkeeper: The estimated average burden associated with the collection of information in this interim final rule is 1 hour per recordkeeper.

Estimated Total Annual Recordkeeping Burden: 200,000 hours.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks, banking, Brokers, Counter money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5331; title III, secs. 314, 352, Pub. L. 107–56, 115 Stat. 307.

2. In subpart I, add new § 103.125 to read as follows:

§ 103.125 Anti-money laundering programs for money services businesses.

(a) Each money services business, as defined by § 103.11(uu), shall develop, implement, and maintain an effective anti-money laundering program. An effective anti-money laundering program is one that is reasonably designed to prevent the money services business from being used to facilitate money laundering and the financing of terrorist activities.

(b) The program shall be commensurate with the risks posed by the location and size of, and the nature and volume of the financial services provided by, the money services business.

(c) The program shall be in writing, and a money services business shall make copies of the anti-money laundering program available for inspection to the Department of the Treasury upon request.

(d) At a minimum, the program shall:

(1) Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with this part.

(i) Policies, procedures, and internal controls developed and implemented under this section shall include provisions for complying with the requirements of this part including, to the extent applicable to the money services business, requirements for:

(A) Verifying customer identification;

(B) Filing reports;

(C) Creating and retaining records; and

(D) Responding to law enforcement requests.

(ii) Money services businesses that have automated data processing systems should integrate their compliance procedures with such systems.

(iii) A person that is a money services business solely because it is an agent for another money services business as set forth in § 103.41(a)(2), and the money services business for which it serves as agent, may by agreement allocate between them responsibility for development of policies, procedures, and internal controls required by this paragraph (d)(1). Each money services business shall remain solely responsible for implementation of the requirements set forth in this section, and nothing in this paragraph (d)(1) relieves any money services business from its obligation to establish and maintain an effective anti-money laundering program.

(2) Designate a person to assure day to day compliance with the program and this part. The responsibilities of such person shall include assuring that:

(i) The money services business properly files reports, and creates and retains records, in accordance with applicable requirements of this part;

(ii) The compliance program is updated as necessary to reflect current requirements of this part, and related

guidance issued by the Department of the Treasury; and

(iii) The money services business provides appropriate training and education in accordance with paragraph (d)(3) of this section.

(3) Provide education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the money services business is required to report such transactions under this part.

(4) Provide for independent review to monitor and maintain an adequate program. The scope and frequency of the review shall be commensurate with the risk of the financial services provided by the money services business. Such review may be conducted by an officer or employee of the money services business so long as the reviewer is not the person designated in paragraph (d)(2) of this section.

(e) *Effective date.* A money services business must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the later of July 24, 2002, and the end of the 90-day period beginning on the day following the date the business is established.

Dated: April 23, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–10453 Filed 4–24–02; 4:09 pm]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA28

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Mutual Funds

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Interim final rule.

SUMMARY: FinCEN is issuing this interim final rule to prescribe minimum standards applicable to mutual funds pursuant to the revised provision in the Bank Secrecy Act that requires financial institutions to establish anti-money laundering programs.

DATES: This interim final rule is effective April 24, 2002. Written comments may be submitted to FinCEN on or before May 29, 2002.

ADDRESSES: Submit comments (preferably an original and four copies) to FinCEN, P.O. Box 39, Vienna, VA 22183, Attn: Section 352 Mutual Fund Regulations. Comments may also be submitted by electronic mail to *regcomments@fincen.treas.gov* with the caption in the body of the text, ''Attention: Section 352 Mutual Fund Regulations.'' Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480; Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927; or Office of Chief Counsel (FinCEN), (703) 905–3590 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Public Law 107–56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to make it easier to prevent, detect, and prosecute international money laundering and the financing of terrorism. Section 352(a) of the Act, which becomes effective on April 24, 2002, amends section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that includes, at a minimum (i) the development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. Section 5318(h)(2) authorizes the Secretary, after consulting with the appropriate Federal functional regulator,[1] to prescribe minimum standards for anti-money laundering programs, and to exempt from the application of those standards any financial institution that is not otherwise subject to BSA regulation.

Although the BSA includes ''an * * * investment company'' [2] among the entities defined as financial institutions, FinCEN has not previously defined the term for purposes of the BSA. The Investment Company Act of 1940 (codified at 15 U.S.C. 80a–1 et seq.) (the 1940 Act) defines investment company broadly [3] and subjects those entities to comprehensive regulation by the Commission. However, entities commonly known as hedge funds, private equity funds and venture capital funds are specifically excluded from the 1940 Act definition of investment company.[4] For purposes of the section 352 requirement that financial institutions establish anti-money laundering programs effective April 24, 2002, Treasury is limiting the application of this interim rule to those investment companies falling within the category of ''open-end company'' contained in section 5(a)(1) of the 1940 Act, which are commonly referred to as ''mutual funds.'' [5]

Mutual funds are by far the predominant type of investment company. Other types of investment companies regulated by the Commission include closed-end companies and unit investment trusts. Closed-end companies typically sell a fixed number of shares in traditional underwritten offerings. Holders of closed-end company shares then trade their shares in secondary market transactions, usually on a securities exchange or in the over-the-counter market. Unit

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[1] The Federal functional regulator for mutual funds is the Securities and Exchange Commission (Commission).

[2] 31 U.S.C 5312(a)(2)(I).

[3] Section 3(a)(1) defines ''investment company'' as any issuer which (A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities; (B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or (C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

[4] Section 356 of the Act requires that the Secretary, the Federal Reserve and the Commission jointly submit a report to Congress, not later than October 26, 2002, on recommendations for effective regulations to apply the requirements of the BSA to investment companies as defined in section 3 of the 1940 Act, including persons that, but for the provisions that exclude entities commonly known as hedge funds, private equity funds, and venture capital funds, would be investment companies.

[5] By interim rule published elsewhere in this separate part of this issue of the **Federal Register**, Treasury is temporarily exempting investment companies other than mutual funds from the requirement that they establish anti-money laundering programs. Treasury is also temporarily deferring determining the definition of ''investment company'' for purposes of the BSA. However, it is likely that those entities excluded from the definition of ''investment company'' in the 1940 Act will be required to establish anti-money laundering programs pursuant to section 352.

investment trusts are pooled investment entities without a board of directors or investment adviser that offer investors redeemable units in an unmanaged, fixed portfolio of securities. Treasury will continue to consider the type of anti-money laundering program that would be appropriate for the issuers of these products, including the extent to which they pose a money laundering risk that is not more effectively covered by the anti-money laundering program of another financial institution involved in their distribution (e.g., a broker-dealer).

Currently, almost 3000 active mutual funds are registered with the Commission. At the end of fiscal year 2001, these companies managed or sponsored 8,313 mutual fund portfolios. During the last few years, mutual fund assets have dramatically increased. Since 1980, the number of mutual fund portfolios has increased 1370 percent and their assets have increased 4,659 percent. During fiscal year 2000 alone, assets managed by mutual funds increased by more than $1.3 trillion. At the end of fiscal year 2001, mutual funds held $6.4 trillion—more than double the $3 trillion of insured deposits at commercial banks, and more than 95 per cent of the assets held by all investment companies regulated by the Commission. Approximately one-third of the assets managed by mutual funds are held in retirement accounts—both employer-sponsored plans and Individual Retirement Accounts (''IRAs'').[6]

A mutual fund offers its shares continuously and is required to provide its shareholders the right to redeem shares at net asset value on a daily basis. Virtually all mutual funds are externally managed. Their operations are conducted by affiliated organizations and third party service providers. An investment adviser is primarily responsible for selecting portfolio investments consistent with the objectives and policies stated in the mutual fund's prospectus.[7] Administrative services are usually conducted by an investment adviser or an unaffiliated third party.

Mutual funds usually offer their shares to the public through a principal underwriter. Principal underwriters are regulated as broker-dealers and are subject to National Association of Securities Dealers, Inc. rules.[8] Mutual funds employ transfer agents to conduct recordkeeping and related functions. Transfer agents maintain records of shareholder accounts, calculate and disburse dividends, and prepare and mail shareholder account statements, federal income tax information, and other shareholder notices. Some transfer agents prepare and mail statements confirming shareholder transactions and account balances, and maintain customer service departments to respond to shareholder inquiries.

A mutual fund is governed by a board of directors or trustees, which is responsible for overseeing the management of the fund's business affairs. In order to avail themselves of certain Commission exemptive rules, most funds' boards have a majority of directors who are independent of the fund's investment adviser or principal underwriter.

In addition to purchasing shares directly from some mutual funds (''direct-sold funds''), investors may purchase mutual fund shares through a variety of distribution channels including broker-dealers (including sponsors of fund ''supermarkets'' where investors can purchase shares of several different mutual funds), insurance agents, financial planners, and banks. These alternative distribution channels usually maintain omnibus accounts with the mutual funds that they distribute. In these cases, the funds and their transfer agents do not know the identities of the individual investors. Only the distributor (*e.g.,* a broker-dealer) will have contact with the individual investors, will receive and process individual investment and redemption requests, and will have access to individuals' trading activity.

Because mutual funds do not usually receive from or disburse to shareholders significant amounts of currency, they are not as likely as banks to be used during the initial placement stage of the money laundering process. However, some structuring schemes used in the placement stage involve monetary instruments such as money orders, and money launderers could attempt to use mutual funds that accept these forms of payment. Money launderers would more likely attempt to use mutual fund accounts in the layering and integration stages of money laundering, rather than the placement stage. ''Layering'' involves the distancing of illegal proceeds from their criminal source through the creation of complex layers of financial transactions. Money launderers could use mutual fund accounts to layer their funds by, for example, sending and receiving money and wiring it quickly through several accounts and multiple institutions, or by redeeming fund shares purchased with illegal proceeds and then reinvesting the proceeds received in another fund. Layering could also involve purchasing funds in the name of a fictitious corporation or an entity designed to conceal the true owner. Mutual funds could also be used for integrating illicit income into legitimate assets. ''Integration'' occurs when illegal proceeds appear to have been derived from a legitimate source. For example, if an individual were to redeem fund shares that were purchased with illegal proceeds and direct that the proceeds be wired to a bank account in the person's own name, the transfer would appear legitimate to the receiving bank.

A recent survey conducted by the General Accounting Office of 310 direct-sold fund groups found that approximately 40 percent of those groups currently have some type of voluntary measures designed to prevent money laundering.[9] However, those measures rarely go beyond restrictions on accepting currency, and thus do not address possible use by money launderers during the layering and integration phases.[10] In light of this vulnerability, and after consultation with the Commission, Treasury has determined not to exercise its authority to exempt temporarily mutual funds from the section 352 requirement to implement anti-money laundering programs. Accordingly, the interim rule sets forth the minimum requirements applicable to such programs.

II. The Anti-Money Laundering Program

The interim final rule requires that, by July 24, 2002, mutual funds develop and implement an anti-money laundering program reasonably designed to prevent them from being used to launder money or finance terrorist activities, which includes achieving and monitoring

[6] See The 1990s: A Decade of Expansion and Change in the U.S. Mutual Fund Industry, Perspective, Investment Company Institute (Vol. 6, No. 3, July 2000).

[7] Advisers to mutual funds must register with the Commission and comply with the requirements of the Investment Advisers Act of 1940 (codified at 15 U.S.C. 80b–1 et seq.).

[8] On April 22, 2002, the Commission approved NASD Regulation Rule 3011, which requires its member firms to develop, and a member of the firm's senior management to approve, programs designed to achieve and monitor compliance with the BSA and related regulations. See Securities Exchange Act Release No. 45798 (April 22, 2002).

[9] Before passage of the Act, the Investment Company Institute, a national association of the investment company industry, recommended procedures for funds to adopt to avoid being used by money launderers. See Money Laundering Compliance for Mutual Funds, Investment Company Institute, May 1999.

[10] Report to the Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, Anti-Money Laundering Efforts in the Securities Industry, GAO–02–111, October 2001.

compliance with the applicable requirements of the BSA and Treasury's implementing regulations.

The legislative history of the Act explains that the requirement to have an anti-money laundering program is not a one-size-fits-all requirement. The general nature of the requirement reflects Congress' intent that each financial institution should have the flexibility to tailor its program to fit its business, taking into account factors such as size, location, activities, and risks or vulnerabilities to money laundering. This flexibility is designed to ensure that all firms subject to the statute, from the largest to the very small firms, have in place policies and procedures appropriate to monitor for anti-money laundering compliance.[11]

In order to assure that this requirement receives the highest level of attention throughout the industry, the proposed rule requires that each company's program be approved in writing by its board of directors or trustees.[12] The four required elements of the anti-money laundering program are discussed below.

(1) Establish and Implement Policies, Procedures, and Internal Controls Reasonably Designed To Prevent the Mutual Fund From Being Used To Launder Money or Finance Terrorist Activities, Including But Not Limited to Achieving Compliance With the Applicable Provisions of the Bank Secrecy Act and the Implementing Regulations Thereunder

Written policies and procedures, which form the basis of any compliance program, should set forth clearly the details of the program, including the responsibilities of the individuals and departments involved. Because mutual funds operate through a variety of different business models, one generic anti-money laundering program for this industry is not possible; rather, each mutual fund must develop a program based upon its own business structure. This requires that each mutual fund complex identify its vulnerabilities to money laundering and terrorist financing activity, understand the BSA requirements applicable to it, identify the risk factors relating to these requirements, design the procedures and controls that will be required to reasonably assure compliance with these requirements, and periodically assess the effectiveness of the procedures and controls.

Policies, procedures, and internal controls should be reasonably designed to detect activities indicative of money laundering. Transactions that could indicate potential money laundering include the use of fraudulent checks and unusual wire activity. For example, an investment in a fund by check or checks drawn on the account of a third party or parties, or by one or more wire transfers from an account of a third party or parties, in each case unrelated to the investor, could be indicative of attempted money laundering. Other examples of ''red flags'' that may indicate potential illegal activity include frequent wire transfer activity to and from a cash reserve account, coming from or sent to the same bank; large deposits with relatively small fund investments; frequent purchases of fund shares followed by large redemptions, particularly if the resulting proceeds are wired to unrelated third parties or bank accounts in foreign countries; and transfers to accounts in countries where drugs are known to be produced or other high-risk countries.[13]

Policies, procedures, and internal controls should also be reasonably designed to assure compliance with BSA requirements. The only BSA regulatory requirement currently applicable to mutual funds is the obligation to report on Form 8300 the receipt of cash or certain noncash instruments totaling more than $10,000 in one transaction or two or more related transactions.[14] In order to develop a compliant anti-money laundering program, the program should be reasonably designed to detect and report not only transactions required to be reported on Form 8300, but also to detect activity designed to evade such requirements. Such activity, commonly known as ''structuring,'' may involve the purchase of more than $10,000 in fund shares with multiple money orders, travelers' checks, or cashiers' checks or other bank checks, each with a face amount of less than $10,000. Such methods of payment may be indicative of money laundering, particularly when the payment instruments were obtained from different sources or the payments were made at different times on the same day or on consecutive days or close in time.

We also note that mutual funds will be required to comply with BSA requirements regarding accountholder identification and verification pursuant to section 326 of the Act, as set forth in joint Treasury/Commission regulations required to be issued by October 26, 2002, and are likely to become subject to additional BSA requirements, including filing suspicious activity reports. As mutual funds become subject to additional requirements, their compliance programs will obviously have to be updated to include appropriate policies, procedures, training, and testing functions.

Because mutual funds typically conduct their operations through separate entities, which may or may not be affiliated, some elements of the compliance program will best be performed by personnel of these separate entities. It is permissible for a mutual fund to contractually delegate the implementation and operation of its anti-money laundering program to another affiliated or unaffiliated service provider, such as a transfer agent. Any mutual fund delegating responsibility for aspects of its anti-money laundering program to a third party must obtain written consent from the third party ensuring the ability of federal examiners to obtain information and records relating to the anti-money laundering program and to inspect the third party for purposes of the program. However, the mutual fund remains responsible for assuring compliance with this regulation. That means that it must take reasonable steps to identify the aspects of its operations that may give rise to BSA regulatory requirements or are vulnerable to money laundering or terrorist financing activity, develop and implement a program reasonably designed to achieve compliance with such regulatory requirements and prevent such activity, monitor the operation of its program and assess its effectiveness. For example, it would not be sufficient to simply obtain a certification from its delegate that it ''has a satisfactory anti-money laundering program.''

With respect to omnibus accounts, a mutual fund's anti-money laundering program could have a more limited scope. Typically, a fund has little or no

[11] See USA PATRIOT Act of 2001: Consideration of H.R. 3162 Before the Senate (October 25, 2001) (statement of Sen. Sarbanes); Financial Anti-Terrorism Act of 2001: Consideration Under Suspension of Rules of H.R. 3004 Before the House of Representatives (October 17, 2001)(statement of Rep. Kelly)(provisions of the Financial Anti-Terrorism Act of 2001 were incorporated as Title III in the Act).

[12] The board's approval could be given at its first regularly scheduled meeting after the program is adopted.

[13] 18 U.S.C. 1956 and 1957 make it a crime for any person, including an individual or company, to engage knowingly in a financial transaction with the proceeds from any of a long list of crimes or ''specific unlawful activity.'' Although the standard of knowledge required is ''actual knowledge,'' actual knowledge includes ''willful blindness.'' Thus, a person could be deemed to have knowledge that proceeds were derived from illegal activity if he or she ignored ''red flags'' that indicated illegality.

[14] See 31 CFR 103.30. If a mutual fund complex includes a registered broker-dealer (as principal underwriter) or a bank (as transfer agent), then those financial institutions would also be subject to separate BSA requirements.

information about the identities and transaction activities of the individual customers represented in an omnibus account. For example, when fund shares are sold through a broker-dealer, the broker-dealer has all of the relevant information about the customer. When that customer places an order for fund shares with her broker-dealer, her individual order is combined with all other purchase or redemption orders to the fund (or its transfer agent). That net order is then processed in the omnibus account. This rule does not require that a mutual fund obtain any additional information regarding individual transactions that are processed through another entity's omnibus account. Consequently, given Treasury's risk-based approach to anti-money laundering programs for financial institutions generally, including mutual funds, it is not expected that mutual funds will scrutinize activity in omnibus accounts to the same extent as individual accounts. Nevertheless, mutual funds would need to analyze the money laundering risks posed by particular omnibus accounts based upon a risk-based evaluation of relevant factors regarding the entity holding the omnibus account, including such factors as the type of entity, its location, type of regulation, and of course, the viability of its anti-money laundering program.

(2) Provide for Independent Testing for Compliance To Be Conducted by Company Personnel or by a Qualified Outside Party

It is necessary that a mutual fund conduct periodic testing of its program, in order to assure that the program is indeed functioning as designed. Such testing should be accomplished by personnel knowledgeable regarding BSA requirements. Such testing may be accomplished either by employees of the fund, its affiliates, or unaffiliated service providers so long as those same employees are not involved in the operation or oversight of the program. The frequency of such a review would depend upon factors such as the size and complexity of the mutual fund complex and the extent to which its business model may be more subject to money laundering than other institutions. A written assessment or report should be a part of the review, and any recommendations resulting from such review should, of course, be promptly implemented or submitted to the board for consideration.

(3) Designate a Person or Persons Responsible for Implementing and Monitoring the Operations and Internal Controls of the Program

The mutual fund must charge an individual (or committee) with the responsibility for overseeing the anti-money laundering program. The person (or group of persons) should be competent and knowledgeable regarding BSA requirements and money laundering issues and risks, and empowered with full responsibility and authority to develop and enforce appropriate policies and procedures throughout the fund complex. Whether the compliance officer is dedicated full time to BSA compliance would depend upon the size and complexity of the fund complex. Although in many cases the implementation and operation of the compliance program will be conducted by entities (and their employees) other than the mutual fund, the person responsible for the supervision of the overall program should be a fund officer.

(4) Provide Ongoing Training for Appropriate Persons

Employee training is an integral part of any anti-money laundering program. Employees of the fund (and of its affiliated and third-party service providers) must be trained in BSA requirements relevant to their functions and in recognizing possible signs of money laundering that could arise in the course of their duties, so that they can carry out their responsibilities effectively. Such training could be conducted by outside or in-house seminars, and could include computer-based training. The level, frequency, and focus of the training would be determined by the responsibilities of the employees and the extent to which their functions bring them in contact with BSA requirements or possible money laundering activity. Consequently, the training program should provide both a general awareness of overall BSA requirements and money laundering issues, as well as more job-specific guidance regarding particular employees' roles and functions in the anti-money laundering program.[15] For those employees whose duties bring them in contact with BSA requirements or possible money laundering activity, the requisite training should occur when the employee assumes those duties. Moreover, these employees should receive periodic updates and refreshers regarding the anti-money laundering program.

Finally, in addition to complying with the requirements of this interim regulation, mutual funds are encouraged to adopt procedures for voluntarily filing Suspicious Activity Reports with FinCEN and for reporting suspected terrorist activities to FinCEN using its Financial Institutions Hotline (1–866–566–3974).

As an administrative matter, this rulemaking includes an amendment to the delegation of examination authority by FinCEN to the Commission, to enable the Commission to examine mutual funds for compliance with this regulation.

III. Implementation Date

Pursuant to section 103.130(b), a mutual fund is required to comply with the anti-money laundering program requirements of 31 CFR 103.130 by July 24, 2002.

IV. Administrative Procedure Act

The provisions of 31 U.S.C. 5318(h)(1), requiring all financial institutions to establish anti-money laundering programs with at least four identified elements, become effective April 24, 2002. This interim rule provides guidance to mutual funds on how to comply with the law in effect on that date and does not impose any obligation on any financial institution that is not required by section 352 of the Act. Accordingly, good cause is found to dispense with notice and public procedure as unnecessary pursuant to 5 U.S.C. 553(b)(B), and to make the provisions of the interim rule effective in less than 30 days pursuant to 5 U.S.C. 553(d)(1) and (3).

V. Regulatory Flexibility Act

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

VI. Executive Order 12866

This interim final rule is not a ''significant regulatory action'' as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

VII. Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of

[15] Appropriate topics for an anti-money laundering program include, but are not limited to: BSA requirements, a description of money laundering, how money laundering is carried out, what types of activities and transactions should raise concerns, what steps should be followed when suspicions arise, and OFAC and other government lists.

information contained in this interim final rule has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1506–0020. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Comments concerning the collection of information should be sent to the Office of Management and Budget, Attn: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503, with copies to FinCEN at Department of the Treasury, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, Virginia, 22183.

FinCEN specifically invites comments on the following subjects: (a) Whether the collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this interim final rule is in 31 CFR 103.130(b). The information will be used by federal agencies to verify compliance by mutual funds with the provisions of 31 CFR 103.130. The collection of information is mandatory. The likely recordkeepers are businesses.

In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 103.130(a) is presented to assist those persons wishing to comment on the information collection.

Description of Recordkeepers: Mutual funds, as defined in 31 CFR 103.130(a).

Estimated Number of Recordkeepers: 3,000.

Estimated Average Annual Burden Hours Per Recordkeeper: The estimated average burden associated with the collection of information in this interim final rule is 1 hour per recordkeeper.

Estimated Total Annual Recordkeeping Burden: 3,000 hours.

List of Subjects in 31 CFR Part 103

Banks, banking, Brokers, Counter money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5331; title III, secs. 314, 352, Pub. L. 107–56, 115 Stat. 307.

2. In Subpart E, revise § 103.56(b)(6) to read as follows:

§ 103.56 Enforcement.

* * * * *

(b) * * *

(6) To the Securities and Exchange Commission with respect to brokers and dealers in securities and investment companies as that term is defined in the Investment Company Act of 1940 (15 U.S.C. 80–1 et seq.);

* * * * *

3. In subpart I, add new § 103.130 to read as follows:

§ 103.130 Anti-money laundering programs for mutual funds.

(a) For purposes of this section, ''mutual fund'' means an open-end company as defined in section 5(a)(1) of the Investment Company act of 1940 (15 U.S.C. 80a–5(a)(1)).

(b) Effective July 24, 2002, each mutual fund shall develop and implement a written anti-money laundering program reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each mutual fund's anti-money laundering program must be approved in writing by its board of directors or trustees. A mutual fund shall make its anti-money laundering program available for inspection by the Commission.

(c) The anti-money laundering program shall at a minimum:

(1) Establish and implement policies, procedures, and internal controls reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;

(2) Provide for independent testing for compliance to be conducted by the mutual fund's personnel or by a qualified outside party;

(3) Designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program; and

(4) Provide ongoing training for appropriate persons.

Dated: April 23, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–10454 Filed 4–24–02; 4:09 pm]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA28

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Operators of a Credit Card System

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Interim final rule.

SUMMARY: FinCEN is issuing this interim final rule to define and provide guidance to operators of credit card systems concerning the revised provision in the Bank Secrecy Act that requires them to establish anti-money laundering programs.

DATES: This interim final rule is effective April 24, 2002. Written comments may be submitted to FinCEN on or before May 29, 2002.

ADDRESSES: Submit comments (preferably an original and four copies) to FinCEN, P.O. Box 39, Vienna, VA 22183, Attn: Section 352 CC Regulations. Comments may also be submitted by electronic mail to *regcomments@fincen.treas.gov* with the caption in the body of the text, Attention: Section 352 CC Regulations.'' Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the Assistant General Counsel for Enforcement

(Treasury), (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Public Law 107–56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to make it easier to prevent, detect, and prosecute international money laundering and the financing of terrorism. Section 352(a) of the Act, which becomes effective on April 24, 2002, amended section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that includes, at a minimum, (i) the development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. As operators of credit card systems are identified as financial institutions under the BSA, 31 U.S.C. 5312(a)(2)(L), they are subject to the anti-money laundering program requirement. This rule is intended to define an ''operator of a credit card system,'' and to provide guidance to them in complying with the law, tailored to the industry.

A. Credit Card Systems

Credit cards represent the right to purchase goods and services, or in some cases the right to obtain a cash advance, against a line of credit offered by the issuer of the credit card. The Truth in Lending Act defines a credit card as a ''card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.'' [1] 15 U.S.C. 1602(k). This interim final rule adopts this definition. Also included within this definition is a charge card, that is, a credit card for which the cardholder must pay the monthly balance in full.[2]

The use to which a credit card may be put depends upon the entity issuing or accepting the card.[3] In the case of general purpose credit cards, such as those issued by members of the VISA or MasterCard system, the cards are accepted by a variety of merchants worldwide. In the United States, most such cards are issued by banks [4] authorized by the operator of the credit card system to use the particular name and access the associated clearance and settlement system. Such entities are called ''issuing institutions.'' On the other side of the transaction, in order for a particular merchant to accept the credit card, it must have a relationship with a bank or entity that is itself authorized to sign up merchants to accept the credit card for purchases and process such credit card transactions. Entities authorized to accept credit card purchases from merchants are called ''acquiring institutions'' or ''merchant institutions.'' In all cases, the operator of the credit card system determines which entities may serve as issuing and acquiring institutions (member institutions) and prescribes rules that member institutions must follow.

Other credit cards used in the United States are issued by a particular merchant or vendor and may only be used in connection with purchases made from that merchant or vendor. Examples include department store and oil company credit cards, as well as charge cards issued by individual merchants. Often such cards are issued by a bank on behalf of a particular merchant, but in some cases the merchant itself may issue the card. Merchants, vendors, or banks whose issuance of credit cards is restricted to such circumstances do not fall within the definition of an operator of a credit card system as set forth in this interim final rule.[5] However, if an entity otherwise falls within the definition of an operator of a credit card system under this interim final rule, the fact that the operator may also issue credit cards with particular merchants, or may itself serve as the issuing or acquiring institution, does not remove it from the scope of this interim final rule.

The purpose for distinguishing between general purpose credit cards and merchant cards lies first in the fact that the definition in the BSA refers to ''an operator of a credit card system'' as a financial institution. We do not view the issuance of a merchant or vendor card as the operation of a credit card system, which is more naturally interpreted to refer to the organizer of a membership or other interrelated group. Second, as discussed more fully below, the significant money laundering or terrorist financing risk associated with the operation of a credit card system sought to be minimized by this interim final rule is the operator's authorization or licensing of issuing or acquiring institutions without conducting appropriate due diligence relating to the money laundering or terrorist financing risk posed by those institutions. A merchant or a vendor that issues its own card does not present that particular risk because it does not perform that function.[6]

With general purpose credit cards, the operator of a credit card system plays a vital role in the authorization, clearance, and settlement of credit card purchases. This role is important to understanding both how the operator of the credit card system can assist in preventing money laundering or terrorist financing, as well as the practical limitations placed on the operator in this regard. Authorization is the process by which the issuer of the credit card approves or rejects a purchase at the time the cardholder seeks to access the line of credit associated with the card. Typically, the merchant swipes the credit card through a terminal that electronically captures the relevant data.[7] Once the merchant keys in the amount of the purchase, that information is transmitted electronically through the operator's system to the issuing bank for approval. If appropriate, the purchase is approved. Once approved, the transaction with the consumer is consummated.

The next step is the clearance process. The merchant submits the credit card payment information to its merchant bank for payment. The merchant bank credits the merchant's account, and

[1] ''Credit'' is defined as ''the right granted by a creditor to a debtor to defer payment of a debt or to incur debt and defer its payment.'' 15 U.S.C. 1602(e).

[2] Regulations implementing the Truth in Lending Act define a charge card as ''a credit card on an account for which no periodic rate is used to compute a finance charge.'' 12 CFR 226.2(15). This interim final rule likewise adopts this definition.

[3] In its 1997 report entitled, ''Payments, Clearance, and Settlement: A Guide to the Systems, Risks and Issues,'' the General Accounting Office described the use of credit cards generally, as well as the role of operators of a credit card system in the clearance and settlement of transactions. *See* GAO/GGD–97–73 at 108–15 (June 1997) (''the 1997 GAO Report'').

[4] For purposes of this preamble, the term ''bank'' refers to insured depository institutions, including federally and state chartered banks, thrifts, and credit unions.

[5] Banks issuing merchant or vendor cards are already subject to anti-money laundering regulation enforced by the bank regulators.

[6] This interim final rule neither considers nor addresses the money laundering or terrorist financing risks associated with issuing institutions. However, this should not be construed to suggest no such risks exist.

[7] ''Electronic Data Capture (EDC) is a point-of-sale terminal that reads the information embedded in the magnetic strip of bank cards. These terminals electronically authorize and capture transaction data, thus eliminating the need for a paper deposit.'' The 1997 GAO Report at 108.

submits the purchase information to the operator of the credit card system. The operator then sends the purchase information to the issuing bank for payment.

The final step is the settlement process. The issuing bank transmits the funds owed by virtue of the purchase to the operator of the credit card system. The operator then transmits the funds to the merchant bank in settlement of the debt. In the settlement process, funds are transmitted through traditional payment systems. The issuing bank then bills the cardholder for the transaction in accordance with the credit agreement.

Thus, the operator of the credit card system not only controls which entities may issue or process transactions involving its card, but it also serves as a clearinghouse where debts are settled and from which payments are made and received. This is the functional definition of an operator of a credit card system. The reality is that there are few operators of credit card systems in the United States, certainly in contrast to the number of issuing and acquiring banks.

In addition, a debit card may at times also be used as a credit card. A debit card generally accesses an existing deposit account at an insured depository institution from which funds are withdrawn upon use of the debit card. Debit cards generally require the use of a personal identification number at the point of sale. Some debit cards can also function as a credit card and some credit card system operators also authorize, clear, and settle debit card transactions. Often such dual use cards are marked with a logo or insignia of the operator of the credit card system. The interim final rule applies to both functions of a dual use card.[8]

B. The Authorization of Acquiring and Issuing Banks

The success of a general purpose credit card depends upon its availability to consumers and the extent to which it is widely accepted by merchants and vendors. The operator of the system is directly responsible for selecting and approving issuing and acquiring institutions to become a part of the system, and setting the rules by which they must abide. In addition, in its role of ensuring that the member institutions continue to abide by the membership rules, the operator of the system indirectly plays a role in selecting and approving other users in the system, including cardholders and merchants. These functions—determining which institutions may serve as issuing or acquiring institutions, and setting and ensuring ongoing compliance with the system's rules and regulations—play a crucial role in determining the extent to which a credit card system may be vulnerable to money laundering or terrorist financing.

It appears that during the authorization, clearance, and settlement process, cardholder and individual merchant names may not be transmitted through the operator's credit card system.[9] Comprehensive cardholder information is maintained by the issuing institutions. Similarly, information about the merchants that accept the card is maintained by the acquiring institutions. Thus, many important anti-money laundering functions of necessity reside with the issuing and acquiring institutions, and, in the United States, existing anti-money laundering regulations typically govern these institutions. However, the initial and continuing authorization of institutions to issue a credit card and process credit card transactions is within the sole control of the operator of the credit card system.

C. Existing Anti-Fraud Functions Performed by the Operator of a Credit Card System

Incentives exist for the operator of a credit card system to minimize financial losses caused by fraud in connection with the use of its credit card. According to the industry, those incentives encourage operators to scrutinize institutions seeking authorization to become issuers or acquirers to ensure that member institutions themselves do not pose an unreasonable risk of loss, whether through participation in fraud or through their issuing or acquiring functions. This interim final rule seeks to take advantage of those existing practices by increasing the scope of the due diligence conducted by the operator to include the potential for money laundering or terrorist financing.

Operators of credit card systems support the efforts of issuing and acquiring institutions in the detection of fraudulent uses of their credit cards. Some of the methods for identifying irregular and possibly fraudulent transactions are quite sophisticated. For example, operators and some issuers use computers to flag potentially fraudulent uses of credit cards as the purchases are authorized, cleared, and settled by comparing recent purchases with the cardholder's purchase history as well as known typologies of fraudulent uses. At this time, Treasury does not necessarily intend to require operators of credit card systems, as part of their anti-money laundering program, to use this type of fraud detection capabilities to detect potential money laundering or terrorist financing. The reason is practical—it is not clear that potential money laundering or terrorist financing can be easily identified with the current technology that evaluates transactions passing through the operator's system. However, Treasury hopes to work with operators of credit card systems going forward to develop, where possible, typologies of money laundering or terrorist financing that may be capable of being identified through existing fraud detection mechanisms.[10]

D. Money Laundering and Terrorist Financing Risks Associated with Credit Cards from the Perspective of the Operator of a Credit Card System

Once in the hands of a consumer, a general purpose credit card is designed to facilitate the purchase of goods or services or the securing of cash advances worldwide with minimal delay. But the very attributes that make credit cards attractive to legitimate consumers are the attributes that make them susceptible to potential abuse. The myriad ways in which credit cards may be abused for money laundering or terrorist financing are beyond the scope of this preamble.[11] Instead, the primary focus of this interim final rule is on the risks—and the need to minimize them—associated with the operator authorizing, and maintaining authorization for, issuing and acquiring institutions.

Absent effective anti-money laundering controls in issuing and acquiring institutions, the use of a credit card may provide a convenient way for money launderers or those financing terrorism to access their tainted funds all over the world. For example, if a foreign bank lacking adequate anti-money laundering controls is authorized

[8] While this interim final rule applies to the debit card functions performed by an operator of a credit card system accepting dual use cards, the rule does not apply generally to operators of a debit card system. Treasury intends to consider whether operators of debit card systems should likewise be included as financial institutions under the BSA and thus be subject to the anti-money laundering program requirement.

[9] Operators may well have complete information regarding cardholders and merchants during the authorization and settlement process, e.g., if the operator also serves as an issuer.

[10] FinCEN, in conjunction with the Bank Secrecy Act Advisory Group, publishes an annual SAR Activity Review that discusses typologies revealed in SAR filings.

[11] The GAO is currently drafting a report that will analyze money laundering in the credit card industry.

to issue a credit card capable of being used in the United States, there exists an increased risk that illicit funds located in the foreign bank may be accessed—and those funds injected into the U.S. financial system—by account holders using the credit card in the United States to make purchases, obtain cash advances, or, if it is a dual use card, use the card as a debit card. The problem is exacerbated by the fact that the operator of the credit card system that clears and settles transactions might not have information about the identity of the cardholder or the source of funds used to pay the debts at the time the transactions are processed.

Under the Act, and even prior to the Act, numerous restrictions and heightened due diligence requirements were placed on U.S. banks and securities brokers and dealers maintaining accounts for certain types of foreign banks and foreign banks located in jurisdictions identified as lacking adequate anti-money laundering controls and supervision. In this way, the Act seeks to eliminate or minimize known risks to the U.S. financial system, even requiring the termination of accounts for certain financial institutions when the risk is deemed too high. Examples of known risks identified by the Act include maintaining ''correspondent accounts'' for: (1) Foreign banks located in jurisdictions identified as lacking basic anti-money laundering controls; (2) foreign shell banks, that is, banks with no physical presence in any jurisdiction; and (3) foreign banks operating under an offshore banking license.[12]

Despite the risks associated with these identified foreign financial institutions, the prohibitions or enhanced due diligence obligations have not been applied directly to operators of credit card systems that may well authorize foreign financial institutions to issue their credit cards and access their systems. But if such foreign banks were authorized to issue credit cards capable of being used in the United States, customers of such banks would have the opportunity to inject illicit funds into the U.S. financial system.

Recent examples confirm the potential for utilizing a credit card system to access in the United States funds located in a foreign financial institutions. The Internal Revenue Service has successfully sought permission to serve ''John Doe'' subpoenas on MasterCard International, American Express Travel Related Services Co., and VISA International seeking records relating to U.S. citizens with credit, charge, and debit cards issued by banks or other financial institutions located in identified tax havens. According to the IRS, U.S. citizens are using credit, charge, and debit cards to access in the United States funds placed in these foreign banks and financial institutions to avoid U.S. taxes. The tax haven jurisdictions do not disclose account information to the United States for purposes of enforcing U.S. tax laws. If credit cards can be used to access funds located in tax havens to avoid U.S. income tax obligations, credit cards have the potential to be used to access illicit funds located in money laundering havens if banks in those jurisdictions are given permission by the operator of the credit card system to issue the credit cards. The same principle holds true for illicit funds deposited in U.S. financial institutions that issue credit cards. To the extent the issuing institution lacks sufficient anti-money laundering controls, issuance of a credit card would allow easy and seemingly ''clean'' access to tainted funds.

E. The Anti-Money Laundering Program

As the foregoing discussion demonstrates, the anti-money laundering program required by this interim final rule is designed primarily to ensure that operators of credit card systems conduct sufficient due diligence on those banks or other entities that they authorize to be issuing or acquiring institutions. Such due diligence should be performed prior to accepting the institution into the system, and on an on-going basis with a frequency that is commensurate with the risk posed by the particular institution. The anti-money laundering program must also have procedures to minimize the opportunity for money laundering or terrorist financing when identified high-risk institutions are issuing or acquiring institutions. In fulfilling obligations under the interim final rule, it is expected that operators will tailor existing rules and guidelines governing member institutions to minimize the risk of money laundering or terrorist financing. Finally, the program should be risk-based, meaning that resources should be devoted to those areas that pose the greatest risk of money laundering or terrorist financing. This interim final rule is meant to provide guidance to operators on identified risks.

The focus of the rule is on what operators can and do control, and it may be that most are already taking the steps outlined in this rule. The interim final rule is not intended to place the operator of a credit card system in the role of guaranteeing that no issuing or acquiring institutions permit money laundering or terrorist financing through the use of the operator's credit card. To the contrary, while the operator of the credit card system will play an important role in minimizing the risk of abuse by controlling access to the system, perhaps even denying access to institutions posing an unreasonable risk of money laundering or terrorist financing, the operator should not be placed in the role of regulating issuing or acquiring institutions.

Finally, in addition to compliance with mandatory regulatory requirements, Treasury and FinCEN encourage operators of credit card systems to have procedures for voluntarily reporting suspected terrorist activity to FinCEN using its Financial Institutions Hotline (1–866–556–3974).

II. Section-by-Section Analysis

A. Section 103.135(a)—Definitions

The definition of an operator of a credit card system is a functional one. It includes any entity that (1) operates a system that clears and settles transactions involving its credit card; and (2) authorizes another entity to serve as an issuing or acquiring institution for the operator's credit card. The credit card must be capable of being used in the United States. An operator may be a bank, a consortium or association of banks, or any other entity performing the functions described. All operators of credit card systems doing business in the United States are covered by the interim final rule.

Issuing and acquiring institutions within such systems need not be located in the United States and may be foreign entities. An issuing institution is any entity authorized by the operator to issue the operator's credit card. An acquiring institution is any entity authorized by the operator to contract with merchants to process transactions involving the operator's credit card. The interim final rule adopts the definition of a credit card found in the Truth in Lending Act, a definition that includes charge cards. Finally, debit cards

[12] See Act sections 312 and 313; see also Minority Staff of the Senate Permanent Subcommittee on Investigations, 107th Cong., Correspondent Banking: A Gateway for Money Laundering, 14–18 (S. Prt. 2001). Congress defined a ''correspondent account'' broadly in the Act to include any ''account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution.'' Act section 311 (31 U.S.C. 5318A(e)(1)(B)). Treasury is now considering comments received on a previous proposed rule in which the statutory definition was adopted without limitation. See 66 FR 67460 (Dec. 28, 2001) (implementing sections 313 and 319(b) of the Act).

capable of being used as a credit card are covered by this interim final rule.

B. Section 103.135(b) and (c)—The Required Anti-Money Laundering Program

Section 103.135(b) requires that each operator of a credit card system have an anti-money laundering program reasonably designed to prevent the system from being used to launder money or to finance terrorist activities. The program must be in writing and approved by senior management. The minimum requirements for the anti-money laundering program are set forth in section 103.135(c). Beyond these minimum requirements, however, the anti-money laundering program is designed to give operators of a credit card system flexibility to design their programs to meet the specific risks presented. The steps necessary to guard against an institution, foreign or domestic, issuing or processing transactions involving the credit card in connection with money laundering when the institution does not fall within a high risk category may be minimal if the institution and its anti-money laundering controls are well known to the operator. The fact that a member institution is a foreign bank or entity is not itself determinative of the risk posed.

The minimum standards for the anti-money laundering program set forth in this interim final rule become effective July 24, 2002.

1. Section 103.135(c)(1)—Policies, Procedures and Internal Controls

Section 103.135(c)(1) requires the operator's anti-money laundering program to include policies, procedures and internal controls focused on the process of authorizing and maintaining authorization for issuing and acquiring institutions. This provision will thus involve the operator tailoring existing anti-fraud and risk of loss assessment procedures to ensure that money laundering and terrorist financing risks are taken into account. It will further involve the operator adapting existing licensing or membership agreements to ensure that member banks and entities fulfill their obligations to assist the operator in guarding against money laundering and terrorist financing. Finally, the interim final rule makes clear that this obligation is ongoing. The frequency with which banks or entities are reviewed to ensure compliance with required procedures will depend upon the operator's assessment of the risk posed by the particular bank or entity.

It is anticipated that the type of information to be considered by the operator in evaluating the risks of money laundering or terrorist financing posed by an issuing or acquiring institution will include many of the same factors that bear on whether the institution represents a risk of fraud or insolvency. In addition, the operator must consider information concerning the institutions, the jurisdictions in which they are located or licensed, and any other money laundering or terrorist financing information provided by Treasury, FinCEN, and other U.S. government sources. Information in publicly available sources should be considered as well. In some situations, information relevant to anti-money laundering controls or risks may need to be obtained from the institution itself, e.g., information relating to the institution's anti-money laundering controls. If an operator is unable to obtain sufficient information from existing or potential issuing or acquiring institutions, this must be taken into account in evaluating the overall money laundering or terrorist financing risk.

For the purpose of making the risk assessment required by § 103.135(c)(1)(i), § 103.135(c)(1)(ii) sets forth the presumption that certain categories of foreign banks or other institutions pose an increased, or in some cases an unreasonable, risk of money laundering or terrorist financing. Accordingly, an operator's anti-money laundering program must be designed to ensure that the institutions identified under this paragraph, if they are permitted to serve as issuing or acquiring institutions, have received a thorough assessment of the risk of money laundering or terrorist financing that they pose in connection with the issuance or acceptance of the operator's credit card. Additionally, the anti-money laundering program must also ensure that the operator has taken reasonable steps to minimize the risks associated with such institutions.

Within this collection of high risk institutions, even though there is a presumption of a heightened risk, operators still retain the flexibility to assess the risk posed in each case to determine whether and under what conditions such an institution may serve as an issuing or acquiring institution. Some of the categories of institutions within this paragraph have been effectively cut off from the U.S. financial system, e.g., foreign shell banks that are not regulated affiliates. Given the unreasonable risk that funds located in such financial institutions are derived from the proceeds of illegal activities or directly support terrorism, there is a significantly heightened risk that allowing them to issue a credit card will introduce the illicit funds into the U.S. financial system. In such cases, the steps necessary to guard against money laundering or terrorist financing by such institutions in connection with the operator's credit card will be comprehensive. On the other hand, other institutions within this list may, upon examination, pose a less significant risk of money laundering or terrorist financing. As a result, the reasonable steps to be taken by the operator to guard against money laundering or terrorist financing will be reduced.

As with all issuing and acquiring institutions, the obligation to assess money laundering and terrorist financing risks applies to both prospective and existing issuing or acquiring institutions. However, institutions falling within the categories identified in § 103.135(c)(1)(ii), because they pose greater risks, should be reviewed by the operator with greater frequency.

By identifying certain high risk institutions, we do not intend to imply that no other institutions pose similar risks. To the contrary, it is incumbent upon the operator to ensure that its anti-money laundering program will identify other institutions posing similar risks.

Section 103.135(c)(1)(iii) confirms that operators of a credit card system must ensure the operators' compliance with any applicable provisions of the BSA or the implementing regulations. At this time, the only BSA provision applicable to an operator of a credit card system, with the exception of this interim final rule, is the obligation to report on Form 8300 the receipt of cash or certain monetary instruments totaling more than $10,000 in one transaction or two or more transactions. Given the functions performed by the operator of a credit card system, it seems unlikely that cash or cash equivalents will be received. However, this provision is inserted in the interim final rule in the event future BSA requirements are imposed on operators of credit card systems.

2. Sections 103.135(c)(2)–(4)—The Compliance Officer, Employee Training, and the Independent Assessment

In connection with its anti-money laundering program, the operator of a credit card system must designate a person or persons to be responsible for administering the anti-money laundering program. The person or persons should be competent and knowledgeable regarding BSA requirements and money laundering issues and risks, and be empowered with full responsibility and authority to

develop and enforce appropriate policies and procedures. The role of the compliance officer is to ensure that (1) the program is implemented; (2) appropriate due diligence is being conducted on existing and potential issuers and acquirers in accordance with the requirements of this interim final rule; and (3) the program is updated to reflect new directives from Treasury or FinCEN. The compliance officer is also responsible for ensuring that appropriate personnel are trained and educated in accordance with section 103.135(c)(3).

Employee training is an integral part of any anti-money laundering program. Those employees with responsibility under the program must be trained in the requirements of this rule and money laundering risks generally so that ''red flags'' associated with existing or potential issuing or acquiring institutions can be identified. Such training could be conducted by outside or in-house seminars, and could include computer-based training. The nature, scope, and frequency of the education and training program of the operator will depend upon the functions performed. However, those with obligations under the anti-money laundering program must be sufficiently trained to carry out their responsibilities effectively. Moreover, these employees should receive periodic updates and refreshers regarding the anti-money laundering program.

Finally, the program must provide for an independent audit of the program on a periodic basis to ensure that it complies with this interim final rule and that it functions as designed. Although the interim final rule refers to an audit, the term does not equate with a financial audit and need not be performed by an outside consultant or accountant. The independent audit may be performed by an employee of the operator, so long as the auditor is not the compliance officer or others involved in administering the program. The frequency of the independent audit will depend upon the operator's assessment of the risks posed. The audit should be accompanied by a written assessment or report, and any recommendations resulting from such review should be implemented promptly or reviewed by senior management.

III. Administrative Procedure Act

The provisions of 31 U.S.C. 5318(h)(1), requiring all financial institutions to establish anti-money laundering programs with at least four identified elements, become effective April 24, 2002. This interim rule provides guidance to operators of credit card systems on how to comply with the law in effect on that date and does not impose any obligation on any financial institution that is not required by section 352 of the Act. Accordingly, good cause is found to dispense with notice and public procedure as unnecessary pursuant to 5 U.S.C. 553(b)(B), and to make the provisions of the interim rule effective in less than 30 days pursuant to 5 U.S.C. 553(d)(1) and (3).

VI. Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this interim final rule has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1506–0020. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this interim final rule is in 31 CFR 103.135(b). The information will be used by federal agencies to verify compliance by operators of credit card systems with the provisions of 31 CFR 103.135. The collection of information is mandatory. The likely recordkeepers are businesses.

In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 103.135(b) is presented to assist those persons wishing to comment on the information collection.

Description of Recordkeepers: Operators of Credit Card Systems, as defined in 31 CFR 103.135(a).

Estimated Number of Recordkeepers: 6.

Estimated Average Annual Burden Hours Per Recordkeeper: The estimated average burden associated with the collection of information in this interim final rule is 1 hour per recordkeeper.

Estimated Total Annual Recordkeeping Burden: 6 hours.

Comments concerning the collection of information should be sent to the Office of Management and Budget, Attn: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503, with copies to FinCEN at Department of the Treasury, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, Virginia, 22183.

FinCEN specifically invites comments on the following subjects: (a) Whether the collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

V. Regulatory Flexibility Act

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

VI. Executive Order 12866

This interim final rule is not a ''significant regulatory action'' as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

List of Subjects in 31 CFR Part 103

Banks, banking, Brokers, Counter money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5331; title III, secs. 314, 352, Pub. L. 107–56, 115 Stat. 307.

2. In subpart I, add new § 103.135 to read as follows:

§ 103.135 Anti-money laundering programs for operators of credit card systems.

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

(1) *Operator of a credit card system* means any person doing business in the United States that operates a system for clearing and settling transactions in

which the operator's credit card, whether acting as a credit or debit card, is used to purchase goods or services or to obtain a cash advance. To fall within this definition, the operator must also have authorized another person (whether located in the United States or not) to be an issuing or acquiring institution for the operator's credit card.

(2) *Issuing institution* means a person authorized by the operator of a credit card system to issue the operator's credit card.

(3) *Acquiring institution* means a person authorized by the operator of a credit card system to contract, directly or indirectly, with merchants or other persons to process transactions, including cash advances, involving the operator's credit card.

(4) *Operator's credit card* means a credit card capable of being used in the United States that:

(i) Has been issued by an issuing institution; and

(ii) Can be used in the operator's credit card system.

(5) *Credit card* has the same meaning as in 15 U.S.C. 1602(k). It includes charge cards as defined in 12 CFR 226.2(15).

(6) *Foreign bank* means any organization that is organized under the laws of a foreign country; engages in the business of banking; is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or the country of its principal banking operations; and receives deposits in the regular course of its business. For purposes of this definition:

(i) The term foreign bank includes a branch of a foreign bank in a territory of the United States, Puerto Rico, Guam, American Samoa, or the U.S. Virgin Islands.

(ii) The term foreign bank does not include:

(A) A U.S. agency or branch of a foreign bank; and

(B) An insured bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the U.S. Virgin Islands.

(b) *Anti-money laundering program requirement.* Effective July 24, 2002, each operator of a credit card system shall develop and implement a written anti-money laundering program reasonably designed to prevent the operator of a credit card system from being used to facilitate money laundering and the financing of terrorist activities. The program must be approved by senior management. Operators of credit card systems must make their anti-money laundering programs available to the Department of the Treasury or the appropriate Federal regulator for review.

(c) *Minimum requirements.* At a minimum, the program must:

(1) Incorporate policies, procedures, and internal controls designed to ensure the following:

(i) That the operator does not authorize, or maintain authorization for, any person to serve as an issuing or acquiring institution without the operator taking appropriate steps, based upon the operator's money laundering or terrorist financing risk assessment, to guard against that person issuing the operator's credit card or acquiring merchants who accept the operator's credit card in circumstances that facilitate money laundering or the financing of terrorist activities;

(ii) For purposes of making the risk assessment required by paragraph (c)(1)(i) of this section, the following persons are presumed to pose a heightened risk of money laundering or terrorist financing when evaluating whether and under what circumstances to authorize, or to maintain authorization for, any such person to serve as an issuing or acquiring institution:

(A) A foreign shell bank that is not a regulated affiliate, as those terms are defined in 31 CFR 104.10(e) and (j);

(B) A person appearing on the Specially Designated Nationals List issued by Treasury's Office of Foreign Assets Control;

(C) A person located in, or operating under a license issued by, a jurisdiction whose government has been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371;

(D) A foreign bank operating under an offshore banking license, other than a branch of a foreign bank if such foreign bank has been found by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act (12 U.S.C. 1841, et seq.) or the International Banking Act (12 U.S.C. 3101, et seq.) to be subject to comprehensive supervision or regulation on a consolidated basis by the relevant supervisors in that jurisdiction;

(E) A person located in, or operating under a license issued by, a jurisdiction that has been designated as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member, with which designation the United States representative to the group or organization concurs; and

(F) A person located in, or operating under a license issued by, a jurisdiction that has been designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns;

(iii) That the operator is in compliance with all applicable provisions of subchapter II of chapter 53 of title 31, United States Code and this part;

(2) Designate a compliance officer who will be responsible for assuring that:

(i) The anti-money laundering program is implemented effectively;

(ii) The anti-money laundering program is updated as necessary to reflect changes in risk factors or the risk assessment, current requirements of part 103, and further guidance issued by the Department of the Treasury; and

(iii) Appropriate personnel are trained in accordance with paragraph (c)(3) of this section;

(3) Provide for education and training of appropriate personnel concerning their responsibilities under the program; and

(4) Provide for an independent audit to monitor and maintain an adequate program. The scope and frequency of the audit shall be commensurate with the risks posed by the persons authorized to issue or accept the operator's credit card. Such audit may be conducted by an officer or employee of the operator, so long as the reviewer is not the person designated in paragraph (c)(2) of this section or a person involved in the operation of the program.

Dated: April 23, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–10455 Filed 4–24–02; 4:09 pm]

BILLING CODE 4810–02–P

Federal Register

Monday,
April 29, 2002

Part V

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Availability of Allowances To Produce Methyl Bromide for Developing Countries; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7202–6]

RIN 2060–AJ74

Protection of Stratospheric Ozone: Availability of Allowances To Produce Methyl Bromide for Developing Countries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This direct final rule extends the availability of limited production rights to manufacture methyl bromide solely for export to developing countries. The rule published in the **Federal Register** on November 28, 2000 (65 FR 70795), allocated additional production allowances, called Article 5 allowances, for the manufacture of methyl bromide solely for export to developing countries only until January 1, 2002. Today's action extends this time limit on the allocation of Article 5 allowances for methyl bromide until January 1, 2005, in accordance with the Clean Air Act. The rationale for this extension appears in the preamble to the direct final rule.

DATES: This rule will become effective on June 28, 2002 without further notice unless the Agency receives adverse comment by May 29, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments on this proposed rulemaking should be submitted in duplicate (two copies) to: Air Docket No. A–92–13, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Mail Code 6102, Washington, DC, 20460. If sending comments by courier, they should be delivered to Air Docket No. A–92–13, USEPA, 401 M Street, SW., Room M–1500, Washington, DC, 20460.

Materials relevant to this rulemaking are contained in Public Docket No. A–2000–24. The docket is located in room M–1500, Waterside Mall (Ground Floor), 401 M Street, SW., Washington, DC 20460. The materials may be inspected from 8am until 5:30pm, Monday through Friday. We may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Information Hotline at 1–800–296–1996, or Tom Land, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, (202)–564–9185, *land.tom@epa.gov.*

SUPPLEMENTARY INFORMATION: We are revising the methyl bromide phaseout regulation as a direct final rule without prior proposal because we view this revision as noncontroversial and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to update the allocation of limited production rights for the manufacture of methyl bromide solely for export to developing countries if adverse comments are filed. This rule will be effective on June 28, 2002 without further notice unless we receive adverse comment by May 29, 2002. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this revision to part 82, subpart A should do so at this time.

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I. What Is the Legislative and Regulatory Background of the Phaseout Regulations for Ozone-Depleting Substances?

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone-depleting substances were promulgated by the Environmental Protection Agency (EPA or the Agency) in the **Federal Register** on December 20, 1994 (59 FR 65478), May 10, 1995 (60 FR 24970), August 4, 1998 (63 FR 41625), and October 5, 1998 (63 FR 53290). The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing, by the U.S. and other countries, of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol).[1]

The requirements contained in the final rules published in the **Federal Register** on December 20, 1994 and May 10, 1995 establish an Allowance Program. The Allowance Program and its history are described in the notice of proposed rulemaking published in the **Federal Register** on November 10, 1994 (59 FR 56276). The control and the phaseout of the production and consumption of class I ozone-depleting substances as required under the Protocol and the CAA are accomplished through the Allowance Program.

In developing the Allowance Program, we collected information on the amounts of ozone-depleting substances produced, imported, exported, transformed and destroyed within the U.S. for specific baseline years for specific chemicals. This information was used to establish the U.S. production and consumption ceilings for these chemicals. The data were also used to assign company-specific production and import rights to companies that were in most cases producing or importing during the specific year of data collection. These production or import rights are called ''allowances.'' Due to the complete phaseout of many of the ozone-depleting chemicals, the quantities of allowances granted to companies for those chemicals were gradually reduced and eventually eliminated. Production allowances and consumption

[1] Several revisions to the original 1988 rule were issued on the following dates: February 9, 1989 (54 FR 6376), April 3, 1989 (54 FR 13502), July 5, 1989 (54 FR 28062), July 12, 1989 (54 FR 29337), February 13, 1990 (55 FR 5005), June 15, 1990 (55 FR 24490) and June 22, 1990 (55 FR 25812) July 30, 1992 (57 FR 33754), and December 10, 1993 (58 FR 65018).

allowances continue to exist for only one specific class I controlled ozone-depleting substance—methyl bromide. All other production or consumption of class I controlled substances is prohibited under the Protocol and the CAA, but for a few narrow exemptions.

In the context of the regulatory program, the use of the term consumption may be misleading. Consumption does not mean the ''use'' of a controlled substance, but rather is defined as the formula: production + imports − exports, of controlled substances (Article 1 of the Protocol and Section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under these regulations, unless otherwise precluded under separate regulations.

The specific names and chemical formulas for the class I controlled ozone-depleting substances are in appendix A and appendix F in subpart A of 40 CFR part 82. The specific names and chemical formulas for the class II controlled ozone-depleting substances are in appendix B and appendix F in subpart A.

Although the regulations phased out the production and consumption of class I, Group II substances (halons) on January 1, 1994, and all other class I controlled substances (except methyl bromide) on January 1, 1996, a very limited number of exemptions exist, consistent with U.S. obligations under the Protocol. The regulations (40 CFR part 82) allow for the manufacture of phased-out class I controlled substances, provided the substances are either transformed, or destroyed. They also allow limited manufacture if the substances are (1) exported to countries operating under Article 5 of the Protocol or (2) produced for essential uses as authorized by the Protocol and the regulations. Limited exceptions to the ban on the import of phased-out class I controlled substances also exist if the substances are: (1) Previously used, (2) imported for essential uses as authorized by the Protocol and the regulations, (3) imported for destruction or transformation only, or (4) a transhipment or a heel (a small amount of controlled substance remaining in a container after discharge).

II. What Is Methyl Bromide?

Methyl bromide is an odorless and colorless gas used in the U.S. and throughout the world as a fumigant. Methyl bromide, which is toxic to living things, is used in many different situations to control a variety of pests, such as: insects, weeds, pathogens, and nematodes. Additional characteristics and details about the uses of methyl bromide, as well as information on the basis for listing methyl bromide as a class I substance, can be found in the proposed rule published in the **Federal Register** on March 18, 1993 (58 FR 15014) and the final rule published in the **Federal Register** on December 10, 1993 (58 FR 65018). Updated information on methyl bromide can be found at the following sites of the World Wide Web: *www.epa.gov/ozone/mbr/* and *www.teap.org* or by contacting the Stratospheric Ozone Protection Hotline at 1–800–296–1996.

III. What Is the Regulatory Background Relating Specifically to Methyl Bromide?

The Parties to the Protocol established a freeze in the level of methyl bromide production and consumption for industrialized countries at the 1992 Meeting in Copenhagen. The Parties agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing the freeze. EPA published a final rule in the **Federal Register** on December 10, 1993, listing methyl bromide as a class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 level, and, in § 82.7 of the rule, setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until the year 2001 (58 FR 65018). Consistent with the CAA requirements for newly listed class I ozone-depleting substances, this rule established a 2001 phaseout for methyl bromide. In the rule published in the **Federal Register** on December 30, 1993 (58 FR 69235), we established baseline methyl bromide production and consumption allowances for specific companies in § 82.5 and § 82.6.

At their 1997 meeting, the Parties agreed to establish the phaseout schedule for methyl bromide in industrialized countries. The U.S. Congress followed by amending the CAA (in October 1998) to direct EPA to promulgate regulations reflecting the Protocol phaseout date of 2005, with interim phasedown steps in 1999, 2001, and 2003. EPA promulgated a regulation that was published in the **Federal Register** on June 1, 1999 (64 FR 29240), instituting the initial interim reduction of 25 percent in the production and import of methyl bromide for the 1999 and 2000 control periods. EPA promulgated a direct final rule in the **Federal Register** on November 28, 2000 (65 FR 70795) establishing the remaining reduction steps of 50 percent of baseline production and consumption for 2001 and 2002, a 70 percent reduction from baseline during 2003 and 2004, and a complete phaseout of methyl bromide production and consumption in 2005 with the possibility of limited exemptions for critical and emergency uses. The Agency also promulgated an interim final rule in the **Federal Register** on July 19, 2001, (66 FR 37752) instituting exemptions for the production and import of quantities of methyl bromide used for quarantine and preshipment applications.

IV. Will Production Allowances Be Available for Export to Developing Countries (§ 82.9)?

a. What Does the Protocol Say About Production for Export to Developing Countries?

The Protocol provides a more relaxed methyl bromide phaseout schedule for Article 5 countries (developing countries operating under Article 5, paragraph 1, of the Protocol), culminating in a complete phaseout in 2015. The Parties believed that until the phaseout date for developing countries, existing production facilities in industrialized countries should be able to supply developing countries, thereby decreasing incentives for construction of new plants in those countries. Thus, the Protocol allows industrialized countries to produce limited, additional methyl bromide explicitly for export to developing countries during and after the phasedown in the industrialized countries.

b. How Did the U.S. Provide for Production for Export to Developing Countries Under the CAA?

Domestically, the Protocol provisions that allow limited production for export to Article 5 countries are reflected in section 604 of the CAA. The current phaseout requirements for methyl bromide appear in section 604(h) of the CAA, as added by section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105–277). In adding section 604(h), Congress also added a provision to 604(e) that specifically addresses production of methyl bromide for export to developing countries. This provision, section 604(e)(3), states that: ''* * * the Administrator may, consistent with the Protocol, authorize the production of limited quantities of methyl bromide, solely for use in developing countries

that are Parties to the Copenhagen Amendments to the Montreal Protocol.''

c. What Production for Export to Article 5 Countries Is Allowed Under the Protocol Past 2001?

As explained above, the CAA specifies that any grant of allowances for export to Article 5 countries be consistent with the Protocol. The Protocol allows industrialized countries to produce limited, additional methyl bromide explicitly for export to developing countries during and after the phasedown in the industrialized countries.

In regard to the remaining years of the phasedown for industrialized countries, Article 2H, paragraph 5 of the Protocol states that from January 1, 2002 until January 1, 2005, ''* * * [the calculated level of production] may exceed [the relevant] limit by a quantity equal to the annual average of its production of the controlled substance in Annex E for basic domestic needs for the period 1994 to 1998 inclusive.''

The Protocol also addresses the period between the complete phaseout for industrialized countries (January 1, 2005) and the complete phaseout for Article 5 countries (January 1, 2015). The difference between the methyl bromide phaseout dates in developing and industrialized countries creates the possibility for developing countries to import methyl bromide beyond the phaseout in industrialized countries (*i.e.,* past January 1, 2005). Thus, an allowance for production to export may be granted not only for 2002–2004 but also past the U.S. domestic phaseout. Article 2H, paragraph 5 bis, provides that: ''[e]ach party shall ensure that for the twelve-month period commencing on 1 January 2005 and in each twelve-month period thereafter, its calculated level of production of [methyl bromide] for the basic domestic needs of the Parties operating under paragraph 1 of Article 5 does not exceed eighty per cent of the annual average of its production of the substance for basic domestic needs for the period 1995 to 1998 inclusive.''

Consistent with the 2015 phaseout for Article V countries, the Protocol goes on to specify in Article 2H, paragraph 5 ter that: ''[e]ach Party shall ensure that for the twelve-month period commencing on 1 January 2015 and in each twelve-month period thereafter, its calculated level of production of [methyl bromide] for the basic domestic needs of the Parties operating under paragraph 1 of Article 5 does not exceed zero.''

d. How Do EPA's Regulations Permit Additional Production for Export to Article 5 Countries?

EPA created a category of allowances called, ''Article 5 Allowances'' in § 82.9 of the regulations to permit limited production of controlled ozone-depleting substances explicitly for export to developing countries. Each U.S. producer of an ozone-depleting substance is granted ''Article 5 Allowances'' equal to an additional specified percentage of their baseline production allowances that are listed in § 82.5. This quantity of additional production is permitted solely for export to Article 5 countries.

e. What Level of Production for Export to Article 5 Countries Is EPA Allocating Past 2001?

With today's action, EPA is extending the availability of Article 5 Allowances at a level of 15 percent of each company's baseline in § 82.5 for the 2002, 2003, and 2004 control periods. While this level is consistent with the Protocol for 2002–2004, it may be that a higher level would also be consistent with the Protocol for these control periods.

In the future, the Agency will adjust the level of Article 5 allowances to be consistent with the maximum level permitted by the Protocol as discussed above. The Agency will be seeking additional information to confirm the accuracy of the amount of methyl bromide shipped from the United States to Article 5 Parties during the new baseline period (1995–1998) that was defined in the Protocol. EPA has been unable to confirm the accuracy of the amount of methyl bromide each U.S. producer shipped to Article 5 Parties during 1995 to 1998. The quantity exported from the U.S. to Article 5 Parties includes: (1) amounts produced through expending production allowances and consumption allowances for which the U.S. companies then requested a ''refund'' of consumption allowances, and (2) amounts produced through expending Article 5 allowances for explicit shipment to Article 5 Parties. One of the confounding factors in confirming data is that the U.S., as one of the major world exporters of methyl bromide, transhipped large quantities through Belgium to developing countries. Some portion of the quantities that went to Belgium were acknowledged to be explicitly for meeting the basic domestic needs of Article 5 Parties while the rest went to non-Article 5 Parties. We have been unable to confirm data on shipments from the U.S. to developing countries with the European Commission and the Ozone Secretariat.

EPA's preliminary analysis indicates that the average quantity of methyl bromide for Article 5 countries for the period 1995 through 1998 is likely to be larger than the 15 percent being allocated with today's rule. However, the Agency will be seeking additional information to confirm data to adjust the grant of Article 5 allowances. We are permitting production of methyl bromide explicitly for developing countries at a level equal to 15 percent of the 1991 baseline in § 82.5, which is likely to be more stringent than the level agreed to by the Parties to the Protocol.

The average production of methyl bromide exported to Article 5 countries during 1995 through 1998 was established as the post-2001 baseline to meet basic domestic needs at the Eleventh Meeting of the Parties to the Montreal Protocol in Beijing. Once the U.S. historical data is confirmed, we plan to grant each U.S. company, for each remaining control period up to 2005, the average quantity exported to Article 5 countries from 1995 through 1998 as Article 5 Allowances. From 2005 to 2015, when the methyl bromide reduction schedule begins for developing countries (except for previously discussed exemptions), we plan to grant to U.S. companies Article 5 allowances in an amount not to exceed 80% of the baseline 1995—1998 average in accordance with the provisions of the Beijing adjustments to the Protocol.

V. What Are the Supporting Analyses?

a. Unfunded Mandates Reform Act

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

applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burden some alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no federal mandates (under the regulatory provisions of the Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local, or tribal government or the private sector. Rather, it extends the availability of an exemption from a regulatory prohibition. Thus, today's rule is not subject to the requirements of sections 202 or 205 of the UMRA.

We determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, we are not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

b. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that is identified by the North American Industry Classification System code (NAICS) in the Table below.

Type of enterprise	NAICS code	Size standard (number of employees)
Organic Chemical Wholesaling	422690	100

(2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This final rule will not impose any requirements on small entities, as it regulates large, multinational corporations that either produce, import or export class I, group VI ozone-depleting substances. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

c. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant'' regulatory action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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

d. Applicability of Executive Order 13045—Children's Health Protection

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.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it implements an exemption established in the Montreal Protocol and adopted by Congress in section 604(e)(3) of the Clean Air Act.

e. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) renewed the

approval of the information collection requirements and assigned OMB control number 2060–0170 (EPA ICR No. 1432.18).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

f. Executive Order 13132 (Federalism)

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

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule extends an exemption used by large, multinational corporations that either produce, import or export class I, group VI ozone-depleting substances. It has no effect on State or local governments. Thus, Executive Order 13132 does not apply to this rule.

g. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

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

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule extends an exemption used by large, multinational corporations that either produce, import or export class I, group VI ozone-depleting substances. It has no effect on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

h. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., 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 did not consider the use of any voluntary consensus standards.

i. 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective June 28, 2002.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Reporting and recordkeeping requirements.

Dated: April 22, 2002.

Christine Todd Whitman,

Administrator.

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

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.9 is amended by revising paragraph (a)(2) to read as follows:

§ 82.9 Availability of allowances in addition to baseline production allowances for class I ozone depleting substances—International transfers of production allowances, Article 5 allowances, essential-use allowances, and essential-use CFCs

(a) * * *

(2) 15 percent of their baseline production allowances for class I, Group VI controlled substances listed under § 82.5 of this subpart for each control period ending before January 1, 2005;

* * * * *

[FR Doc. 02–10416 Filed 4–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7202–7]

RIN 2060–AJ74

Protection of Stratospheric Ozone: Interim Change in Allowances To Produce Methyl Bromide for Developing Countries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: With this action, EPA is proposing to extend the time companies are allocated limited production rights to manufacture methyl bromide solely for export to developing countries. The rule published in the **Federal Register** on November 28, 2000 (65 FR 70795), allocated additional production allowances, called Article 5 allowances, for the manufacture of methyl bromide solely for export to developing countries only until January 1, 2002. Today's action extends this time limit on the allocation of Article 5 allowances for methyl bromide until January 1, 2005, in accordance with the Clean Air Act.

Elsewhere in this issue of the **Federal Register**, EPA is extending the time companies are allocated limited production rights to manufacture methyl bromide solely for export to developing countries as a direct final rule without prior proposal because the Agency views this changes as noncontroversial and anticipates no relevant adverse comments. The rationale for this extension appears in the preamble to the direct final rule. If no relevant adverse comments are received in response to the direct final rule, no further activity is contemplated on this proposed rule. The EPA believes today's action is noncontroversial because it does not result in any change in policy and merely extends the time period for an existing provision of the regulation.

DATES: Written comments on this proposed rule must be received on or before May 29, 2002, unless a public hearing is requested. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on May 9, 2002. If a hearing is held, EPA will publish a document in the **Federal Register** announcing the hearing information. Inquires regarding a public hearing should be directed to the contact person listed below.

ADDRESSES: Comments on this proposed rulemaking (companion to the direct final rule) should be submitted in duplicate (two copies) to: Air Docket No. A–92–13, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Mail Code 6102, Washington, D.C., 20460. If sending comments by courier, they should be delivered to Air Docket No. A–92–13, USEPA, 401 M Street, SW, Room M–1500, Washington, D.C., 20460. Comments must be identified with Docket No. A–92–13 and must be identified as comments on this proposed rule (companion to the direct final rule). Inquiries regarding a public hearing should be directed to the Stratospheric Ozone Protection Hotline at 1–800–269–1996.

Materials relevant to this proposed rulemaking are contained in Docket No. A–92–13. The Docket is located in room M–1500, First Floor, Waterside Mall at the courier delivery address above. The materials may be inspected from 8 a.m. until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Tom Land, U.S. Environmental Protection Agency, Global Programs Division, Office of Atmospheric Programs, 6205J, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, (202)–564–9185, land.tom@epa.gov.

SUPPLEMENTARY INFORMATION: The EPA believes that the revision in the direct final rule published in today's **Federal Register** is noncontroversial; however, should the Agency receive relevant adverse comment on this rule, it will publish a notice informing the public that the revision did not take effect. All relevant adverse comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on today's revision to part 82, subpart A should do so at this time. For additional information, see the direct final rule published in the Final Rules section of this **Federal Register**.

Supporting Analyses

a. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no federal mandates (under the regulatory provisions of the Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local, or tribal government or the private sector. Rather, it extends the availability of an exemption from a regulatory prohibition. Thus, today's rule is not subject to the requirements of sections 202 or 205 of the UMRA.

We determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, we are not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice

and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business that is identified by the North American Industry Classification System code (NAICS) in the Table below.

Type of enterprise	NAIC code	Size standard (number of employees)
Organic Chemicals Wholesaling	422690	100

(2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities, as it regulates large, multinational corporations that either produce, import or export class I, group VI ozone-depleting substances.

c. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant'' regulatory action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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

d. Applicability of Executive Order 13045—Children's Health Protection

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.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it implements an exemption established in the Montreal Protocol and adopted by Congress in section 604(e)(3) of the Clean Air Act.

e. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) renewed the approval of the information collection requirements and assigned OMB control number 2060–0170 (EPA ICR No. 1432.18).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

f. Executive Order 13132 (Federalism)

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

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule extends an exemption used by large, multinational corporations that either produce, import or export class I, group VI ozone-depleting substances. It has no effect on State or local governments. Thus, Executive Order 13132 does not apply to this rule.

g. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

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

This final rule does not have tribal implications. It will not have substantial

direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule extends an exemption used by large, multinational corporations that either produce, import or export class I, group VI ozone-depleting substances. It has no effect on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

h. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

i. Executive Order 13211 (Energy Effects)

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed rule would simply extend the time period for production of methyl bromide explicitly for export to developing countries and therefore have no adverse impacts on energy supply, distribution or use.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Reporting and recordkeeping requirements.

Dated: April 22, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–10417 Filed 4–26–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
April 29, 2002

Part VI

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Interim Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020409080–2080–01; I.D. 032602A]

RIN 0648–AP78

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS issues this interim final rule to implement restrictions under the Northeast Multispecies Fishery Management Plan (FMP). This interim final rule reduces overfishing on Northeast groundfish stocks through reductions in fishing mortality achieved from measures that include temporal extension of existing area closures, new area closures, new gear restrictions, restrictions on days-at-sea (DAS) usage, and more restrictive recreational fishing measures. The measures reduce overfishing and provide substantive protection for Gulf of Maine (GOM) cod, as well as several other groundfish stocks in the Northeast, while NMFS and the New England Fishery Management Council (Council) develop a comprehensive amendment to the FMP to bring it into compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and all other applicable law.

DATES: Effective from May 1, 2002, through July 31, 2002, except for §§ 648.80(j)(3)(i) and (iii) and 648.89(i)(1) which are effective May 15, 2002, through July 31, 2002. Comments must be received no later than 5 p.m., local time on May 29, 2002.

ADDRESSES: Written comments should be sent to, and copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) supporting this action may be obtained from, Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Interim Final Rule for Groundfish.'' Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: 978–281–9347, fax: 978–281–9135; e-mail: *thomas.warren@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2001, a decision was rendered by the U.S. District Court for the District of Columbia (Court) on a lawsuit brought by the Conservation Law Foundation, Center for Marine Conservation, National Audubon Society and Natural Resources Defense Council against NMFS (*Conservation Law Foundation, et al.,* v. *Evans,* Case No. 00CVO1134, (D.D.C., December 28, 2001)). The lawsuit alleged that Framework Adjustment 33 to the FMP violated the overfishing, rebuilding and bycatch provisions of the Magnuson-Stevens Act (18 U.S.C. 1801, *et seq.*), as amended by the Sustainable Fisheries Act (SFA), and the Court granted plaintiffs' Motion for Summary Judgment on all counts. The Court did not impose a remedy, but instead asked the parties to the lawsuit to propose remedies consistent with the Court's findings. The Court specifically found that Framework 33 failed to meet the FMP's Amendment 9 and SFA overfishing and rebuilding targets. Amendment 9 established overfishing and rebuilding objectives to meet SFA requirements. Amendment 9, however, did not implement or analyze any specific measures necessary to meet the new overfishing and rebuilding objectives. Framework 33, which was developed after Amendment 9, was an annual adjustment required by Amendment 7 to meet Amendment 7 targets. In developing Framework 33, the Council chose measures to meet Amendment 7 (pre-SFA) objectives, rather than Amendment 9 objectives because, although Amendment 9 contained overfishing definitions and control rules, it did not specify a rebuilding program or analyze the measures necessary to implement a rebuilding program consistent with SFA requirements. The Court found that Framework 33 should have implemented measures to meet Amendment 9/SFA overfishing criteria and rebuilding objectives, rather than those of Amendment 7. Further, the Court found that Amendment 9 and Framework 33 violated SFA because they did not include a ''standardized bycatch reporting methodology'' and did not adequately justify the lack of new measures to minimize bycatch to the extent practicable.

On March 1, 2002, NMFS, at the request of the Court, proposed a measure to bring the FMP into full compliance with the SFA, the Magnuson-Stevens Act and all other applicable law as quickly as possible. That proposed measure would have resulted in a series of three actions over the next year and a half. Plaintiffs and the intervenors in the case also proposed remedies to the Court. From April 5–9, 2002, plaintiffs, defendants and intervenors engaged in Court-assisted mediation to try to agree upon mutually acceptable short-term and long-term solutions to present to the Court as a possible settlement. Although these discussions ended with no settlement, several of the parties continued mediation and filed with the Court a Settlement Agreement Among Certain Parties (Settlement Agreement) on April 16, 2002. In addition to NMFS, the parties signing the agreement include the Conservation Law Foundation, which is one of the plaintiff conservation groups, all four state intervenors, and two of three industry intervenors. This interim final rule implements the short-term measures contained in the Settlement Agreement filed with the Court. Additional interim measures, which will be the subject of a future proposed rule, are to be implemented on August 1, 2002, at the expiration of this interim action. To come into full compliance with the requirements of the Magnuson-Stevens Act, as amended by the SFA, additional reductions in fishing mortality will be necessary for many of the groundfish stocks managed under the FMP. The full extent of all of these requirements will be met through Amendment 13, which will implement rebuilding plans for several groundfish stocks and address capacity issues in the fishery. Amendment 13 is under development by NMFS and the Council on an accelerated schedule and will be implemented by August 22, 2003.

The first Secretarial interim rule is somewhat less restrictive on certain segments of the industry than the earlier proposed interim rule, most notably, in that it removes the 2:1 DAS usage requirement, the minimum 24 hour DAS counting requirement, and the closure of the Western Gulf of Maine (WGOM) Area Closure to recreational fishers. The second Secretarial interim rule proposal (to be implemented on August 1, 2002) specifies a new suite of measures that were not contemplated in the earlier proposal that have differential impacts on the industry. NMFS consented to the Settlement Agreement, notwithstanding the different impacts compared to the

earlier proposal, based on its determination that reaching a broad consensus with industry groups, state managers and one of the plaintiff conservation groups ultimately would serve the industry and the resource better than a proposal without such a consensus. Controversial new and more restrictive measures supported by a broad consensus of industry and conservation interests are more likely to be complied with than measures lacking such consensus. In addition, NMFS determined that consenting to a Settlement Agreement with most of the parties to the litigation enhances the likelihood that the Court will adopt such an agreement thereby ensuring that the agency retains control on how and when to implement remedial measures consistent with applicable law. The measures called for in the Settlement Agreement reduce overfishing on key groundfish stocks sufficiently in the short-term to provide NMFS and the Council, adequate opportunity to develop and implement, through the full public process, long-term measures to rebuild these stocks consistent with the Magnuson-Stevens Act and other applicable law.

This interim rule is to be promulgated, as contemplated by the earlier proposal, under the authority of section 304(e), consistent with section 305(c), of the Magnuson-Stevens Act, which allows for interim measures to reduce overfishing until an amendment to stop overfishing and rebuild fish stocks is implemented. Such interim measures do not, by themselves, have to stop overfishing. Section 305(c)(1) of the Magnuson-Stevens Act states that, if the Secretary finds that an emergency or overfishing exists, or that interim measures are needed to reduce overfishing for any fishery, the Secretary may promulgate emergency regulations or interim measures necessary to address the emergency or overfishing. For the reasons noted above, the Secretary has determined that several stocks of Northeast groundfish are being overfished. This action will implement Secretarial interim measures to quickly and significantly reduce overfishing on GOM cod, as well as other groundfish stocks, while NMFS and the Council complete Amendment 13. Given the benefits from significant reductions in fishing mortality on GOM cod and other groundfish stocks that will result from this interim final rule and the additional interim measures to be implemented on August 1, 2002; and the improving status of the stocks; delaying Amendment 13 is not expected to jeopardize the ability of the multispecies complex to meet rebuilding objectives.

Management Measures

The following management measures are implemented through this interim final rule. Existing measures that are not specifically changed or modified by this interim final rule will remain status quo, including the GOM cod 400-lb (181.4-kg) per day/4,000-lb (1,814-kg) per trip landing limit.

This interim action divides the GOM/GB Regulated Mesh Area (RMA) into two areas: The GOM RMA, which is the area north of the GOM cod exemption line currently used to define the divide between the GOM cod and GB cod trip limit allowances; and the GB RMA, which is that part of the GOM/GB RMA that lies south of the GOM cod exemption line. Specific management measures may also apply, depending on the area fished.

DAS Counting

To make DAS usage more uniform among various sectors of the fishery, the first day of a fishing trip that lasts longer than 3 hours will be counted as a minimum of 15 hours on the DAS clock. Trips of 3 hours or less will be counted as actual time, to account for aborted trips due to bad weather, breakdowns, etc. Trips greater than 15 hours would be counted as actual time. For example, if a vessel calls in to the multispecies DAS program at 6 a.m. to begin a trip, and calls out of the DAS program at 4 p.m. that same day to end its trip, the vessel will be charged a minimum of 15 hours, rather than actual time (in this case, 10 hours). This measure currently applies only to gillnet vessels that have declared into the Day gillnet category when fishing under a multispecies DAS. This interim action extends the measure to all gear sectors.

Limitation on DAS Use

Any vessel fishing under a multispecies DAS during May-July is allowed to use no more than 25 percent of its allocated DAS during that period. For example, a vessel with a multispecies Fleet DAS allocation fishing in the GOM RMA during May-July may use a maximum of 22 allocated multispecies DAS (88 DAS x 0.25). (Because carry-over DAS are not part of a vessels allocated DAS, carry-over DAS may not be used when determining the 25 percent DAS usage allowed for the May-July period.) This effort control measure is intended to remove fishing effort from periods when cod landings are traditionally at their highest for both GOM and GB cod. This portion of the alternative is summarized in Table 1.

TABLE 1.—DAS COUNTING SCHEME DURING MAY THROUGH JULY

ALL AREAS DAS Counting—all vessels	
From 0 to 3 h	Counted as actual time.
From > 3 to 15 h	Counted as 15 h.
Greater than 15 h	Counted as actual time.
DAS use restriction	Limited to 25 percent of annual DAS allocation.

Prohibition on Front-Loading the DAS Clock

Existing regulations require that, at the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call NMFS to notify NMFS that the trip has ended, thus ending a DAS. However, there is no restriction on when a vessel can start its clock. Consequently, some vessel owners start their DAS clock well in advance of the actual departure of the vessel, a practice known as ''front-loading.'' Front-loading allows a vessel to run the clock for as many as 10 days prior to departing on a trip, essentially allowing a vessel to catch 10-days worth of GOM cod, the maximum trip limit, in 1 day of fishing. The current practice is not consistent with the intent of the GOM cod rebuilding program and makes the trip limit less effective at reducing F. In addition, the provision creates inequities between fishing vessels, since a number of vessels currently record their DAS through a vessel monitoring system (VMS), used voluntarily or, in some cases, as required by a fishery management plan for another fishery.

While other provisions of this interim action may discourage front-loading of the DAS clock (specifically, the 25-percent DAS use restriction), this measure would explicitly prohibit the practice of front-loading. Under this measure, a vessel owner or authorized representative must notify NMFS no earlier than 1 hour prior to the vessel leaving port to fish under the multispecies DAS program. A DAS begins once the call has been received and a confirmation number is given. This measure applies in all management areas.

Closed Area Additions/Modifications

This action implements additional seasonal and year-round area closures to ensure that areas with traditionally high catches of cod are further protected. Specifically, this action continues, in its current configuration, the closure of the WGOM Area Closure beyond the scheduled May 1, 2002, reopening date.

This action also expands Rolling Closure Area III by closing area blocks 124 and 125 for the month of May, and expands Rolling Closure Area IV by closing area blocks 132 and 133 for the month of June.

Additionally, the seasonal area closure known as Cashes Ledge Area Closure, in its current configuration, will be closed for the duration of this interim final rule. Exemptions to the current rolling closure areas remain the same for the expanded rolling closures implemented by this interim final rule; that is, all vessels will be prohibited from fishing in Rolling Closure Areas III and IV, unless the vessel is fishing with or using exempted gear, as defined in § 648.81(t)(2), excluding pelagic gillnet gear capable of catching multispecies, and except for vessels fishing with a single pelagic gillnet. In addition, recreational vessels are exempt, as is the use of scallop dredge gear, when a vessel is fishing under a scallop DAS or when it is fishing in the Scallop Dredge Fishery Exemption Area, as described in § 648.80(j)(11), provided the vessel does not retain any regulated multispecies during a trip, or on any part of a trip. Also, vessels are exempt from the monthly closure areas when fishing in the Raised Footrope Trawl Exempted Whiting Fishery, as specified in § 648.80(j)(15). All of the exemptions listed above apply to the WGOM and Cashes Ledge Area Closures, with the following exceptions: Vessels are prohibited from fishing with scallop dredge gear or fishing in the Raised Footrope Trawl Exempted Whiting Fishery.

All other closure areas are unchanged. The WGOM and Cashes Ledge Area Closures and the additional GOM seasonal closures included under this action have been selected as times/areas with high cod landings that, when closed, will contribute to a significant reduction in cod mortality. Charts of the new and existing closure areas are available from the Regional Administrator upon request (*see* **ADDRESSES**).

Gear Restrictions

Under this interim final rule, beginning May 15, 2002, vessels using trawls (other than midwater trawls) and fishing any part of a multispecies DAS trip in the GOM RMA will be required to fish with a minimum 6.5-inch (16.5-cm) diamond or square mesh codend. This requirement applies only to the codend of the net; the minimum mesh-size for the remaining portion of the net is unchanged, i.e., 6.0-inch (15.24-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, or any combination thereof, throughout the remaining portion of the net. Trawl vessels that currently fish with 6.5 inch (16.5-cm) square mesh throughout the entire net will not be subject to mesh changes under this rule. For vessels fishing with a 6.5-inch (16.5-cm) diamond mesh codend, or for vessels fishing with a 6.5-inch (16.5-cm) square mesh codend and a combination of square mesh and diamond mesh throughout the remaining portions of the net, the codend is defined as follows: 25 meshes for diamond mesh, or 50 bars in the case of square mesh, from the terminus of the net for vessels 45 ft (13.7-m) in length and less, and 50 meshes for diamond mesh, or 100 bars in the case of square mesh, from the terminus of the net for vessels greater than 45 ft (13.7 m) in length. The status quo minimum mesh size of 6.0-inch (15.2-cm) diamond or 6.5-inch (16.5-cm) square mesh throughout the net when fishing under a multispecies DAS remains in effect in the GB RMA.

Beginning May 15, 2002, this interim final rule also requires that limited access multispecies vessels that obtain an annual designation as a Trip gillnet vessel, when fishing in the GOM RMA during any part of a trip under a multispecies DAS, fish with nets with a minimum of 6.5-inch (16.5-cm) mesh. Multispecies vessels that obtain an annual designation as a Day gillnet vessel must fish with nets with a minimum mesh size of 6.5 inches (16.5 cm) when fishing with roundfish gillnets, or 7 inches (17.8 cm) when fishing with flatfish gillnet gear when fishing any part of a trip under a multispecies DAS in the GOM RMA. The allowable amount of gillnet gear for Day gillnet vessels when fishing under a multispecies DAS is reduced from the currently allowed 80 roundfish nets/160 flatfish nets to 50 roundfish nets/100 flatfish nets. Monkfish vessels that have a monkfish limited access Category C or D permit (*i.e.,* vessels that possess both a monkfish and multispecies limited access permit) and that are fishing as a Day gillnet vessel under a monkfish DAS will be restricted to 150 nets (from the current 160 nets), provided the vessel fishes with nets with a minimum mesh size of 10 inches (25.4 cm). Net reductions apply everywhere. The existing gillnet tagging requirements are suspended for the duration of this interim rule.

Recreational and Charter/Party Vessel Restrictions

Under this action, the minimum length for cod retained by a federally permitted charter/party vessels, and private recreational vessels not holding a Federal permit and fishing in the EEZ, is increased to 23 inches (58.4 cm) from the current size limit of 21 inches (53.3 cm).

This action implements a cod and haddock bag (possession) limit for the charter/party recreational fishing sector when fishing in the GOM RMA. Each person on a charter/party vessel will be allowed to possess no more than 10 cod or haddock, combined, per trip. The regulations currently prohibit a vessel fishing under the charter/party regulations from fishing in the GOM closure areas unless the vessel has on board a letter of authorization (LOA) issued by the Regional Administrator. This LOA is currently valid for a period of 3 months, and prevents a vessel from fishing under a DAS and selling fish during the time of authorization and thus exempts the charter/party vessel from the WGOM closure. Under this interim action, beginning May 15, 2002, charter/party vessels are required to possess an LOA for the full span of this interim final rule in order to fish as a charter/party vessel in the GOM closure areas. LOAs issued to vessels before May 1, 2002, and which would expire prior to the expiration of this interim action, will automatically be canceled at midnight on May 14, 2002. Vessels wanting to obtain an LOA for the entire duration of this interim action will need to obtain a new LOA by calling the NMFS Permit Office at 978–281–9370.

All other existing recreational measures remain unchanged, including the no-sale provision for both the party/charter and private recreational sectors when not fishing under a NE multispecies DAS. Table 2 summarizes the party/charter and private recreational sector measures.

TABLE 2.—CHARTER/PARTY AND PRIVATE RECREATIONAL FISHING MEASURES

	Minimum fish size, Inches (code only)[1]	Bag limit (combined)	Closure exemption authorization
Charter/party	23	10 cod/haddock[2]	Duration of interim action.

TABLE 2.—CHARTER/PARTY AND PRIVATE RECREATIONAL FISHING MEASURES—Continued

	Minimum fish size, Inches (code only)[1]	Bag limit (combined)	Closure exemption authorization
Private Recreational	23	10 cod/haddock	N/A.

[1] All other minimum fish sizes remain unchanged.
[2] When fishing in the GOM RMA.

Observer Coverage

Although not a management measure, NMFS will, by May 1, 2002, expand significantly its observer coverage in the Northeast multispecies fishery to monitor and collect information on bycatch, as well as other biological and fishery-related information. Observer coverage will be increased by approximately 1,200 days (more than double the 2001 coverage) with coverage distributed over gear categories, vessel size categories and fishing regions, in order to provide statistically sound estimates of directed catch, non-directed catch and discards (bycatch).

Classification

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement to provide prior notice and opportunity for public comment. Implementation of this action by May 1, 2002, is necessary to continue, in its current configuration, the WGOM Area Closure, an area with high cod landings, beyond its scheduled May 1, 2002, re-opening date. The re-opening of the WGOM Area Closure was postponed initially through measures promulgated under Framework Adjustment 33 (65 FR 21658, April 24, 2000), and was further discussed by the Council and public during development of Framework Adjustment 36. The WGOM Area Closure, and the additional management measures included under this action, will contribute to a significant reduction in cod mortality. The AA finds also that the exigencies associated with complying with the Court order and providing immediate protection to the multispecies stocks by significantly reducing overfishing while longer-term, more comprehensive measures are being developed, constitutes good cause to waive the requirement to provide prior notice and the opportunity for public comment, pursuant to authority set forth at U.S.C. 553(b)(B), as such procedures would be impracticable and contrary to the public interest. This determination is further supported by the fact that these measures are largely based on measures developed and analyzed by the Council, and commented on by the public, in the development of Framework 36 to the FMP. The need to implement these measures in a timely manner to have management measures in place to both maintain the WGOM Area Closure and to reduce overfishing at the start of the 2002 multispecies fishing year, beginning May 1, 2002, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay, or a portion thereof, in effective date.

This interim final rule includes by reference collection-of-information requirements subject to the Paperwork Reduction Act. This rule will not impact substantially the current respondent estimates. The collection of this information has been approved by OMB, and the OMB control numbers and the estimated time for a response are as follows:

Letters of authorization, OMB control number 0648–0202 (5 minutes/response).

Letters of authorization, OMB control number 0648–0422 (2 minutes/response).

Call-in system (DAS notification), OMB control number 0648–0202 (2 minutes/response).

The aforementioned response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS prepared an EA for this interim action and the AA concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the EA is available from NMFS (see **ADDRESSES**).

This interim final rule has been determined to be significant for purposes of Executive Order 12866.

Because this interim final rule is published without opportunity for notice and comment, neither the Regulatory Flexibility Act, nor any other law requires preparation of an Initial Regulatory Flexibility Analysis. Therefore, none has been prepared.

An informal consultation under section 7 of the Endangered Species Act was concluded for this interim final rule under the FMP on April 17, 2002. As a result of the informal consultation, the Regional Administrator determined that fishing activities conducted under this interim final rule are not likely to adversely affect endangered or threatened species or critical habitat.

The Regional Administrator has determined that fishing activities conducted under this interim final rule will have no adverse impact on marine mammals.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 24, 2002.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.2, the definitions ''Day(s)-at-Sea (DAS)'', ''Non-exempt species'', and ''Prior to leaving port'' are suspended and new definitions for ''Day(s)-at-Sea (DAS) for the 2002 fishing year'', ''Non-exempt species for the 2002 fishery'', ''Prior to leaving port for the 2002 fishery'', and ''Private recreational fishing vessel'' are added to read as follows:

§ 648.2 Definitions.

* * * * *

Day(s)-at-Sea (DAS) for the 2002 fishing year, with respect to the NE multispecies fishery, the monkfish fishery, and the Atlantic sea scallop

fishery, except as described in § 648.82(k)(1)(iv), means the 24-hour period of time, or any part thereof, during which a fishing vessel is absent from port to fish for, possess or land, or fishes for, possesses, or lands regulated species, monkfish, or scallops. With respect to the NE multispecies fishery, accrual and usage of DAS is described at § 648.82(l).

* * * * *

Non-exempt species for the 2002 fishery means species of fish not included under the GOM, GB and SNE Regulated Mesh Area exempted fisheries, as specified in paragraphs § 648.80(e); (j)(5); (j)(6); (j)(9) through (14); (k)(3)(i) and (ii); (k)(5) through (8); and (m), (o), and (p).

* * * * *

Prior to leaving port for the 2002 fishery, with respect to the call-in notification system for NE multispecies, means no more than 1 hour prior to the time a vessel leaves the last dock or mooring in port from which a vessel departs to engage in fishing, including the transport of fish to another port.

Private recreational fishing vessel, with respect to the NE multispecies fishery, means a vessel engaged in recreational fishing that has not been issued a Federal multispecies permit, does not sell fish, and does not take passengers for hire.

* * * * *

3. In § 648.10, paragraph (c)(1) is suspended, and paragraph (c)(6) is added to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(c) * * *

(6) Less than 1 hour prior to leaving port, for vessels issued a limited access NE multispecies permit or, for vessels issued a limited access NE multispecies permit and a limited access monkfish Category C or D permit, and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following information: Owner and caller name and phone number, vessel's name and permit number, type of trip to be taken, port of departure, and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first.

* * * * *

4. In § 648.14, paragraphs (a)(35) through (45), (a)(47), (a)(49) through (53), (a)(90), (a)(101), (a)(102), (a)(104), (a)(112), (a)(116), (a)(121), (b)(2), (c)(10), (c)(13), (c)(19), (c)(20), (c)(23) through (26), (c)(29) through (31), (g)(2) and (3), and (z)(2)(i) are suspended, and paragraphs (a)(123) through (148), (b)(3), (c)(32) through (37), and (g)(4) through (6) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(123) Fish with, use, or have on board, within the areas described in § 648.80(j)(1) and (2), nets with mesh size smaller than the minimum mesh size specified in § 648.80(j)(3) and (4), except as provided in § 648.80(e), (j)(5) through (7), (j)(9), (j)(10), (j)(15), (m), and (p), unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(124) Fish with, use, or have available for immediate use within the area described in § 648.80(k)(1), nets of mesh size smaller than the minimum size specified in § 648.80(k)(2), except as provided in § 648.80(e), (k)(3), (k)(9), (m), and (p), or unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(125) Fish with, use, or have available for immediate use within the area described in § 648.80(l)(1), nets of mesh size smaller than the minimum mesh size specified in § 648.80(l)(2); except as provided in § 648.80(e), (l)(3), (m), and (o); or unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(126) Enter or be in the area described in § 648.81(p)(1) on a fishing vessel, except as provided in § 648.81(p)(2) and (s).

(127) Enter or be in the area described in § 648.81(q)(1) on a fishing vessel, except as provided in § 648.81(q)(2).

(128) Enter or be in the area described in § 648.81(r)(1) on a fishing vessel, except as allowed under § 648.81(r)(2) and (s).

(129) Fail to comply with the gear-marking requirements of § 648.84.

(130) Fish within the areas described in § 648.80(j)(6) with nets of mesh smaller than the minimum size specified in § 648.80(j)(4), unless the vessel possesses on board a valid authorizing letter issued to the vessel under § 648.80(j)(6)(i) and the vessel complies with the requirements specified in § 648.80(j)(6).

(131) Violate any of the provisions of § 648.80, including paragraphs (j)(5), the small-mesh northern shrimp fishery exemption area; (j)(6), the Cultivator Shoal whiting fishery exemption area; (j)(9), Small-mesh Area 1/Small-mesh Area 2; (j)(10), the Nantucket Shoals dogfish fishery exemption area; (j)(12), the Nantucket Shoals mussel and sea urchin dredge exemption area; (j)(13), the GOM/GB monkfish gillnet exemption area; (j)(14), the GOM/GB dogfish gillnet exemption area; (j)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (k)(3), exemptions (small mesh); (k)(5), the SNE monkfish and skate trawl exemption area; (k)(6), the SNE monkfish and skate gillnet exemption area; (k)(7), the SNE dogfish gillnet exemption area; (k)(8), the SNE mussel and sea urchin dredge exemption area; or (k)(9), the SNE little tunny gillnet exemption area. Each violation of any provision in § 648.80 constitutes a separate violation.

(132) Fish for, land, or possess NE multispecies harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 648.80(m), or unless the vessels that engaged in pair trawling have not been issued NE multispecies permits and fish for NE multispecies exclusively in state waters.

(133) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 648.80(j)(5).

(134) Fish for the species specified in § 648.80(e) or (m) with a net of mesh size smaller than the applicable mesh size specified in § 648.80(j)(3) or (4), (k)(2), or (l)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 648.80(e) or (m), or unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(135) Violate any of the possession or landing restrictions on fishing with scallop dredge gear specified in §§ 648.80(o) and 648.94.

(136) Violate any provision of the state waters winter flounder exemption program as provided in § 648.80(p).

(137) Obstruct or constrict a net as described in § 648.80(n)(1) or (2).

(138) Enter, be on a fishing vessel in, or fail to remove gear from, the EEZ portion of the areas described in § 648.81(t)(1), during the time periods specified in § 648.81(t)(1), except as provided in § 648.81(s) and (t)(2).

(139) Possess, land, or fish for regulated species, except winter flounder as provided for in accordance

with § 648.80(p) and from or within the areas described in § 648.80(p), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, unless the vessel and the dredge gear conform with the stowage requirements of § 648.51(a)(2)(ii) and (e)(2), or unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(140) Use, set, haul back, fish with, possess on board a vessel, unless stowed in accordance with § 648.23(b), or fail to remove, sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(t)(2)(ii)), in the areas and for the times specified in § 648.87(a) and (b), except as provided in §§ 648.81(t)(2)(ii) and 648.87(a) and (b), or unless otherwise authorized in writing by the Regional Administrator.

(141) Enter or fish in the Gulf of Maine, Georges Bank and Southern New England Regulated Mesh Areas, except as provided in § 648.80(j)(3)(iii) and (k)(2)(ii), and for purposes of transiting, provided that all gear (other than exempted gear) is stowed in accordance with § 648.23(b).

(142) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(p), (q), (r), (t), (u), and (v), unless otherwise specified in § 648.81(r)(2)(iii), (t)(2)(i), and (t)(2)(iii).

(143) Fish for, harvest, possess, or land in or from the EEZ, when fishing with trawl gear, any of the exempted species specified in § 648.80(j)(9)(i), unless such species were fished for or harvested by a vessel meeting the requirements specified in § 648.80(j)(5)(ii) or (j)(9)(ii).

(144) Fish for, harvest, possess, or land any species of fish in or from the GOM/GB Inshore Restricted Roller Gear Area described in § 648.80(j)(3)(v) with trawl gear where the diameter of any part of the trawl footrope, including discs, rollers or rockhoppers, is greater than 12 inches (30.48 cm).

(145) Enter, be on a fishing vessel in, or fail to remove gear from, the EEZ portion of the areas and time periods specified in § 648.81(w), except as provided in § 648.81(s) and (w)(2).

(146) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in § 648.81(t)(1) through (v)(1), during the time periods specified, except as provided in § 648.81(s), (t)(2), (u)(2) and (v)(2).

(147) Enter, be on a fishing vessel in, or fail to remove gear from the area described in § 648.81(v)(1), except as provided in § 648.81(s) and (v)(2).

(148) Enter, fail to remove gear from, or be in the areas described in § 648.81(t)(1) through (v)(1) during the time period specified, except as provided in § 648.81(s), (t)(2), (u)(2), and (v)(2).

(b) * * *

(3) If the vessel has been issued a charter/party permit or is fishing under charter/party regulations, fail to comply with the requirements specified in § 648.81(t)(2)(iii) when fishing in the areas described in § 648.81(t)(1), (u), and (w), during the time periods specified in those sections.

(c) * * *

(32) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching NE multispecies from, or be in the areas, and during the times, described in § 648.87(a) and (b), except as provided in § 648.81(s) and (t)(2), and in § 648.87(a)(1)(ii).

(33) If the vessel has been issued a Day gillnet category designation, fail to remove gillnet gear from the water as described in § 648.82(g), (k)(1)(iv) and (k)(1)(ix).

(34) Fail to comply with the exemption specification as described in § 648.86(h)(5).

(35) Fail to enter port and call out of the DAS program no later than 14 DAS after starting a multispecies DAS trip (i.e., the time a vessel leaves port or when the vessel received a DAS authorization number, whichever comes first), as specified in § 648.10(f)(3), unless otherwise specified in § 648.86(b)(1)(ii), or unless the vessel is fishing under the cod exemption specified in § 648.86(b)(5).

(36) Enter port, while on a NE multispecies DAS trip, in possession of more that the allowable limit of cod specified in § 648.86(b)(1), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(5). Under no circumstances may such trip exceed 14 days in length.

(37) If the vessel has been issued a Charter/Party permit or is fishing under charter/party regulations, fail to comply with the requirements specified in § 648.81(t)(2)(iii) when fishing in the areas described in § 648.81(t)(1) through (v)(1), during the time periods specified in those sections.

* * * * *

(g) * * *

(4) Possess cod, haddock, and Atlantic halibut in excess of the possession limits specified in § 648.89(g).

(5) Sell, trade, or otherwise transfer, or attempt to sell, trade, barter, or otherwise transfer, NE multispecies for a commercial purpose as specified in § 648.89(h).

(6) Retain fish smaller than the minimum fish sizes specified in § 648.89(f), if fishing under the private recreational and party/charter regulations.

* * * * *

5. In § 648.53, paragraph (e) is suspended and paragraph (g) is added to read as follows:

§ 648.53 DAS allocations.

* * * * *

(g) *Accrual of DAS.* DAS shall accrue to the nearest minute, except as specified in § 648.82(l).

6. In § 648.80, paragraphs (a) through (d), and (g) through (i) are suspended, and paragraphs (j) through (p) are added to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(j) *Gulf of Maine (GOM) and Georges Bank (GB) Regulated Mesh Areas*—(1) *GOM Regulated Mesh Area.* The GOM Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary defined by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
G5	(2)	67°20′

1 The intersection of the shoreline and the U.S.-Canada Maritime Boundary.
2 The intersection of the U.S.-Canada Maritime Boundary and 67°20' W. long.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
G5	(1)	67°20′
G6	42°20′	67°20′
G7	42°20′	69°30′
G8	42°00′	69°30′
G9	42°00′	(2)

1 The intersection of the U.S.-Canada Maritime Boundary and 67°20' W. long.
2 The intersection of the Cape Cod, MA, coastline and 42°00' N. lat.

(2) *GB Regulated Mesh Area.* The GB Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the north by the southern boundary of the GOM Regulated Mesh Area as defined in paragraph (j)(1)(ii) of this section; and

(ii) Bounded on the east and south by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.	Approximate loran C bearings
G5	(1)	67°20′	
G10	41°18.6′	66°24.8′	
G11	40°55.5′	66°38′	5930–Y–30750–Y–43500.
G12	40°45.5′	68°00′	9960–Y–43500 and 68°00′ W. lat.
G13	40°37′	68°00′	9960–Y–43450 and 68°00′ W. lat.
G14	40°30′	69°00′	
NL3	40°22.7′	69°00′	
NL2	40°18.7′	69°40′	
NL1	40°50′	69°40′	
G11	40°50′	70°00′	
G12		70°00′[1]	

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(3) *GOM Regulated Mesh Area minimum mesh size restrictions*—(i) *Vessels using trawls.* Except as provided in paragraphs (j)(3)(i) and (iv) of this section, and unless otherwise restricted under paragraph (j)(3)(vi) of this section, the minimum mesh size for any trawl net, except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.24-cm) diamond mesh or 6.5-inch (16.51-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.51-cm) diamond mesh applied to the first 50 meshes, counting from the terminus of the net, for vessel greater than 45 ft (13.7 m) in length overall, and applied to the first 25 meshes for vessels 45 ft (13.7 m) or less in length overall, or 6.5-inch (16.51-cm) square mesh applied to the first 100 bars, counting from the terminus of the net, for vessels greater than 45 ft (13.7 m) in length overall, and applied to the first 50 bars, counting from the terminus of the net, for vessels 45 ft (13.7 m) or less in length overall, provided the vessel complies with the requirements of paragraph (j)(3)(v) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (j)(3)(ii) and (iv) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.24-cm) diamond mesh or 6.5-inch (16.51-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (j)(3)(v) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Gillnet vessels*—(A) *Trip gillnet vessels.* Except as provided in paragraphs (j)(3)(iii) and (iv) of this section, for vessels that obtain an annual designation as a Trip gillnet vessel, the minimum mesh size for any sink gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.51 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(B) *Day gillnet vessels.* Except as provided in paragraphs (j)(3)(iii) and (iv) of this section, for vessels that obtain an annual designation as a Day gillnet vessel, the minimum mesh size for any roundfish gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.51 cm) throughout the entire net, and the minimum mesh size for any flatfish gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 7.0 inches (17.78 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Other restrictions and exemptions.* Vessels other than private recreational vessels are prohibited from fishing in the GOM or GB Regulated Mesh Area, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (e), (j)(5) through (j)(7), (j)(9) through (j)(14), (m), (o), and (p) of this section; or if fishing under a NE multispecies DAS; or if fishing under the small vessel exemption specified in § 648.82(b)(3); or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (j)(11) of this section; if fishing under a scallop DAS in accordance with paragraph (h) of this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(v) *Rockhopper and roller gear restrictions.* For all trawl vessels fishing in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers, must not exceed 12 inches (30.48 cm). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

INSHORE RESTRICTED ROLLER GEAR AREA

Point	N. Lat.	W. Long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM23	42°00′	69°50′
GM24	43°00′	69°50′
GM11	43°00′	70°00′
GM17	43°30′	70°00′
GM18	43°00′	(4)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] Maine shoreline.

(vi) *Large-mesh vessels.* When fishing in the GOM or GB Regulated Mesh Area,

the minimum mesh size for any sink gillnet on a vessel or used by a vessel fishing under a DAS in the large-mesh DAS program specified in § 648.82(b)(6) and (9) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel or used by a vessel fishing under a DAS in the large-mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(4) *GB Regulated Mesh Area gear restrictions.* Except as provided in paragraphs (j)(3)(iv) and (j)(4) of this section, and unless otherwise restricted under paragraph (j)(3)(vi) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.24-cm) diamond mesh or 6.5-inch (16.51-cm) square mesh throughout the entire net, or any combination thereof, provided the vessel complies with the requirements of paragraph (j)(3)(v) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(5) *Small Mesh Northern Shrimp Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in this paragraph (j) may fish for, harvest, possess, or land northern shrimp in the Small Mesh Northern Shrimp Fishery Exemption Area with nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements of paragraphs (j)(5)(i) through (iii) of this section. The Small Mesh Northern Shrimp Fishery Exemption Area is defined by straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

SMALL MESH NORTHERN SHRIMP FISHERY EXEMPTION AREA

Point	N. Lat.	W. Long.
SM1	41°35′	70°00′
SM2	41°35′	69°40′
SM3	42°49.5′	69°40′
SM4	43°12′	69°00′
SM5	43°41′	68°00′

SMALL MESH NORTHERN SHRIMP FISHERY EXEMPTION AREA—Continued

Point	N. Lat.	W. Long.
G2	43°58′	67°22′
G1	(1)	(1)

[1] Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* (A) Through April 30, 2003, an owner or operator of a vessel fishing in the northern shrimp fishery described in this section under this exemption may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(B) Beginning May 1, 2003, an owner or operator of a vessel fishing for northern shrimp may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to 100 lb (45.36 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(ii) *Requirement to use a finfish excluder device (FED).* A vessel must have a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl, secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate, in any net with mesh smaller than the minimum size specified in paragraphs (j)(3) and (4) of this section. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate. (Copies of a schematic example of a properly configured and installed FED are available from the Regional Administrator upon request.)

(iii) *Time restrictions.* A vessel may only fish under this exemption during the northern shrimp season, as established by the Commission and announced in the Commission's letter to participants.

(6) *Cultivator Shoal Whiting Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (j)(3) and (4) of this section may fish with, use, or possess nets in the Cultivator Shoal Whiting Fishery Exemption Area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (j)(6)(i) of this section. The Cultivator Shoal Whiting Fishery Exemption Area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

Point	N. Lat.	W. Long.
C1	42°10′	68°10′
C2	41°30′	68°41′
CI4	41°30′	68°30′
C3	41°12.8′	68°30′
C4	41°05′	68°20′
C5	41°55′	67°40′
C1	42°10′	68°10′

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have a valid letter of authorization issued by the Regional Administrator on board.

(B) Through April 30, 2003, an owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish, and red hake—up to 10 percent each, by weight, of all other species on board; monkfish and monkfish parts—up to 10 percent, by

weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Beginning May 1, 2003, an owner or operator of a vessel fishing in this area is subject to the mesh size restrictions specified in paragraph (j)(6)(i)(D) of this section and may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 10,000 lb (4,536 kg), except for the allowable incidental species listed in paragraph (j)(6)(i)(B) of this section.

(D) Counting from the terminus of the net, all nets must have a minimum mesh size of 3-inch (7.62-cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.28 m) in length applied to and the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.28 m) in length.

(E) Fishing is confined to a season of June 15 through September 30, unless otherwise specified by notification in the **Federal Register**.

(F) When transiting through the GOM or GB Regulated Mesh Areas specified under paragraphs (j)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraphs (j)(3) or (4) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small-mesh multispecies under another exempted fishery specified in this paragraph (j).

(G) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the requirements specified in this paragraph (j)(6)(i) for the entire trip.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The NEFMC shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make appropriate recommendations to the Regional Administrator following the procedures specified in § 648.90.

(7) *Transiting.* (i) Vessels fishing in the Small Mesh Northern Shrimp Fishery or the Small Mesh Area 1/Small Mesh Area 2 fishery, as specified in paragraphs (j)(5) and (9) of this section, may transit through the Small Mesh Northern Shrimp Fishery Exemption Area as specified in paragraph (a)(5) of this section with nets of mesh size smaller than the minimum mesh size specified in paragraphs (j)(3) or (4) of this section, provided that the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b).

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (j)(3) or (4) of this section may transit through the Small Mesh Northern Shrimp Fishery Exemption Area defined in paragraph (j)(5) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b), and provided the vessel has no fish on board.

(iii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (j)(3) or (4) of this section may transit through the GOM and GB Regulated Mesh Areas defined in paragraphs (j)(1) and (2) of this section with nets on board with a mesh size smaller than the minimum mesh size specified and with small mesh exempted species on board, provided that the following conditions are met:

(A) All nets with a mesh size smaller than the minimum mesh size specified in paragraphs (j)(3) or (4) of this section are stowed in accordance with one of the methods specified in § 648.23(b).

(B) A letter of authorization issued by the Regional Administrator is on board.

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (j)(6), (j)(10), (j)(15), (b), and (c) of this section. Vessels may retain exempted small mesh species as provided in paragraphs (j)(6)(i), (j)(10)(i), (j)(15)(i), (b)(3), and (c)(3) of this section.

(8) *Addition or deletion of exemptions*—(i) *Species*—(A) *Regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications are made through issuance of a rule in the **Federal Register**.

(B) *Small-mesh multispecies.* Beginning May 1, 2003, an exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of small-mesh multispecies bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of small-mesh multispecies caught as bycatch is, or can be reduced to, less than 10 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of small-mesh multispecies. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 10 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions, or modifications are made through issuance of a rule in the **Federal Register**.

(ii) The NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage

catch of regulated species or small-mesh multispecies.

(iii) The Regional Administrator may, using the process described in either paragraph (j)(8)(i) or (ii) of this section, authorize an exemption for a white hake fishery by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such fishery shall not include white hake.

(iv) Bycatch in exempted fisheries authorized under this paragraph (j)(8) are subject, at minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (j)(8)(iii) of this section, a prohibition on the possession of regulated species.

(B) A limit on the possession of monkfish or monkfish parts of 10 percent, by weight, of all other species on board or as specified by § 648.94(c)(3), (4), (5) or (6), as applicable, whichever is less.

(C) A limit on the possession of lobsters of 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less.

(D) A limit on the possession of skate or skate parts in the Southern New England regulated mesh area described in paragraph (b) of this section of 10 percent, by weight, of all other species on board.

(9) *Small Mesh Area 1/Small Mesh Area 2*—(i) *Description.* (A) Unless otherwise prohibited in § 648.81, through April 30, 2003, a vessel subject to the minimum mesh size restrictions specified in paragraphs (j)(3) or (4) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (j)(5)(ii) or (j)(9)(ii) of this section and § 648.86(d) from July 15 through November 15, when fishing in Small-mesh Area 1, and from January 1 through June 30, when fishing in Small-mesh Area 2. An owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to the amounts specified in § 648.86(d); butterfish; dogfish; herring; Atlantic mackerel; ocean pout; scup; squid; and red hake; except for the following allowable incidental species (bycatch as the term is used elsewhere in this part) with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(B) Unless otherwise prohibited in § 648.81, beginning May 1, 2003, in addition to the requirements specified in paragraph (j)(9)(i)(A) of this section, nets may not have a mesh size of less than 3-inch (7.62-cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and counting the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length. An owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to 10,000 lb (4,536 kg); butterfish; dogfish; herring; Atlantic mackerel; ocean pout; scup; squid; and red hake; except for the following allowable incidental species (bycatch, as the term is used elsewhere in this part) with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Small-mesh areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (*see* Table 1 to § 600.502 of this chapter)):

SMALL MESH AREA I

Point	N. Lat.	W. Long.
SM1	43°03′	70°27′
SM2	42°57′	70°22′
SM3	42°47′	70°32′
SM4	42°45′	70°29′
SM5	42°43′	70°32′
SM6	42°44′	70°39′
SM7	42°49′	70°43′
SM8	42°50′	70°41′
SM9	42°53′	70°43′
SM10	42°55′	70°40′
SM11	42°59′	70°32′
SM1	43°03′	70°27′

SMALL-MESH AREA 2

Point	N. Lat.	W. Long.
SM13	43°05.6′	69°55.0′
SM14	43°10.1′	69°43.3′

SMALL-MESH AREA 2—Continued

Point	N. Lat.	W. Long.
SM15	42°49.5′	69°40.0′
SM16	42°41.5′	69°40.0′
SM17	42°36.6′	69°55.0′
SM13	43°05.6′	69°55.0′

(ii) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (j)(9)(ii)(A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom:

(A) Eight-inch (20.3-cm) diameter floats must be attached to the entire length of the headrope with a maximum spacing of 4 ft (121.9 cm) between floats;

(B) The ground gear must all be bare wire not larger than ½-inch (1.2-cm) for the top leg, not larger than ⅝-inch (1.6-cm) for the bottom leg, and not larger than ¾-inch (1.9-cm) for the ground cables. The top and bottom legs must be equal in length, with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms from the doors to wingends.

(C) The footrope must be longer than the length of the headrope, but not more than 20 ft (6.1 m) longer than the length of the headrope. The footrope must be rigged so that it does not contact the ocean bottom while fishing.

(D) The raised footrope trawl may be used with or without a chain sweep. If used without a chain sweep, the drop chains must be a maximum of ⅜-inch (0.95-cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends. If used with a chain sweep, the sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long drop chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging, including drop chains, must be made entirely of bare chain with a maximum diameter of 5/16 inches (0.8 cm). No wrapping or cookies are

allowed on the drop chains or sweep. The total length of the sweep must be at least 7 ft (2.1 m) longer than the total length of the footrope, or 3.5 ft (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner. The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at intervals of 8 ft (2.4 m) from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 ft (1.1 m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

(10) *Nantucket Shoals dogfish fishery exemption area.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (j)(3) or (4) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in the Nantucket Shoals Dogfish Fishery Exemption Area, if the vessel complies with the requirements specified in paragraph (j)(10)(i) of this section. The Nantucket Shoals Dogfish Fishery Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	N. Lat.	W. Long.
NS1	41°45′	70°00′
NS2	41°45′	69°20′
NS3	41°30′	69°20′
CL1	41°30′	69°23′
NS5	41°26.5′	69°20′
NS6	40°50′	69°20′
NS7	40°50′	70°00′
NS1	41°45′	70°00′

(i) *Requirements.* (A) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area under the exemption must have on board a letter of authorization issued by the Regional Administrator and may not fish for, possess on board, or land any species of fish other than dogfish, except as provided under paragraph (j)(10)(i)(D) of this section.

(B) Fishing is confined to June 1 through October 15.

(C) When transiting the GOM or GB Regulated Mesh Areas, specified under paragraph (a) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraph (a) of this section must be stowed and unavailable for immediate use in accordance with § 648.23(b).

(D)(*1*) Through April 30, 2003, the following species may be retained, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.72 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(*2*) Beginning May 1, 2003, all nets must comply with a minimum mesh size of 3-inch (7.62-cm) square or diamond mesh, counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and counting the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length. Vessels may retain the allowable incidental species listed in paragraph (j)(10)(i)(D)(1) of this section.

(E) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area under the exemption must comply with any additional gear restrictions specified in the letter of authorization issued by the Regional Administrator.

(ii) *Sea sampling.* The Regional Administrator may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

(11) *Scallop Dredge Fishery Exemption within the Gulf of Maine (GOM) Small Mesh Northern Shrimp Fishery Exemption Area.* Unless otherwise prohibited in § 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a general scallop permit, may fish in the GOM Small Mesh Northern Shrimp Fishery Exemption Area when not under a NE multispecies DAS, providing the vessel complies with the requirements specified in paragraph (j)(11)(i) of this section. The GOM Scallop Dredge Fishery Exemption Area is the same as the area defined in paragraph (j)(5) of this section and designated as the Small Mesh Northern Shrimp Fishery Exemption Area.

(i) *Requirements.* (A) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area specified in paragraph (j)(11) of this section may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by or in possession on board vessels fishing in the GOM Scallop Dredge Fishery Exemption Area shall not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) The exemption does not apply to the Western GOM Area Closure specified in § 648.81(u).

(ii) [Reserved]

(12) *Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area.* A vessel may fish with a dredge in the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area, provided that any dredge on board the vessel does not exceed 8 ft (2.44 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins. The area coordinates of the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area are the same coordinates as those of the Nantucket Shoals Dogfish Fishery Exemption Area specified under paragraph (j)(10) of this section.

(13) *GOM/GB Monkfish Gillnet Exemption.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (j)(13)(i) of this section. The GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area is defined by straight lines connecting the following points in the order stated:

N. Lat.	W. Long.
41°35′	70°00′
42°49.5′	70°00′
42°49.5′	69°40′
43°12′	69°00′
(1)	69°00′

[1] Due north to Maine shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than monkfish, or lobsters in an amount not to exceed 10 percent by

weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through September 14.

(ii) [Reserved]

(14) *GOM/GB Dogfish Gillnet Exemption.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (j)(14)(i) of this section. The area coordinates of the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area are specified in paragraph (j)(13) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than dogfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 6.5-inch (16.5-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through August 31.

(ii) [Reserved]

(15) *Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (j)(3) or (4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (j)(15)(i) of this section. The Raised Footrope Trawl Whiting Fishery area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION

Point	N. Lat.	W. Long.
RF 1	42°01.9′	70°14.7′
RF 2	41°59.45′	70°23.65′
RF 3	42°07.85′	70°30.1′
RF 4	42°15.05′	70°08.8′
RF 5	42°08.35′	70°04.05′
RF 6	42°04.75′	70°16.95′
RF 1	42°01.9′	70°14.7′

(i) *Requirements.* (A) A vessel fishing in the Raised Footrope Trawl Whiting Fishery under this exemption must have on board a valid letter of authorization issued by the Regional Administrator. To obtain a letter of authorization, vessel owners must write to or call during normal business hours the Northeast Region Permit Office and provide the vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled. Since letters of authorization are effective the day after they are requested, vessel owners should allow appropriate processing and mailing time. To withdraw from a category, vessel owners must write to or call the Northeast Region Permit Office. Withdrawals are effective the day after the date of request. Withdrawals may occur after a minimum of 7 days of enrollment.

(B) Through April 30, 2003, all nets must comply with a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (j)(15)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than whiting and offshore hake subject to the applicable possession limits as specified in § 648.86, except for the following allowable incidental species: Red hake; butterfish; dogfish; herring; mackerel; scup; and squid.

(C) Beginning May 1, 2003, in addition to the requirements specified in paragraph (j)(15)(i)(B) of this section, all nets must comply with a minimum mesh size of 3-inch (7.62-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (j)(15)(i)(D) of this section. An owner or operator of any vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to 10,000 lb (4,536 kg); red hake; butterfish; dogfish; herring; mackerel; scup; and squid.

(D) All nets must comply with the minimum mesh sizes specified in paragraphs (j)(15)(i)(B) and (C) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length.

(E) Raised footrope trawl gear is required and must be configured as specified in paragraphs (j)(9)(ii)(A) through (D) of this section.

(F) Fishing may only occur from September 1 through November 20 of each fishing year.

(G) A vessel enrolled in the Raised Footrope Trawl Whiting Fishery may fish for small-mesh multispecies in exempted fisheries outside of the Raised Footrope Trawl Whiting Fishery exemption area, provided that the vessel complies with the more restrictive gear, possession limit and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization. For example, a vessel may fish in both the Raised Footrope Trawl Whiting Fishery and the Cultivator Shoal Whiting Fishery Exemption Area and would be restricted to a minimum mesh size of 3 inches (7.62 cm), as required in the Cultivator Shoal Whiting Fishery Exemption Area, the use of the raised footrope trawl, and the catch and bycatch restrictions of the Raised Footrope Trawl Whiting Fishery, except for red hake, which is restricted to 10 percent of the total catch under the Cultivator Shoal Whiting Fishery.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to evaluate the bycatch of regulated species.

(k) *Southern New England (SNE) Regulated Mesh Area*—(1) *Area definition.* The SNE Regulated Mesh Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND REGULATED MESH AREA

Point	N. Lat.	W. Long.
G5	41°18.6′	66°24.8′
G6	40°55.5′	66°38′
G7	40°45.5′	68°00′
G8	40°37′	68°00′
G9	40°30.5′	69°00′
NL3	40°22.7′	69°00′
NL2	40°18.7′	69°40′
NL1	40°50′	69°40′
G11	40°50′	70°00′
G12		70°00′ [1]

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) Bounded on the west by the eastern boundary of the Mid-Atlantic Regulated Mesh Area.

(2) *Gear restrictions*—(i) *Minimum mesh size.* Except as provided in paragraphs (k)(2)(i) and (ii) of this section, and unless otherwise restricted under paragraph (k)(2)(iii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or midwater trawl, not stowed and not available for immediate

use in accordance with § 648.23(b), by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE regulated mesh area, is 6-inch (15.24-cm) diamond mesh or 6.5-inch (16.51-cm) square mesh or any combination thereof, throughout the entire net. This minimum mesh size restriction does not apply to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Other restrictions and exemptions*. Vessels are prohibited from fishing in the SNE Regulated Mesh Area except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (e), (k)(3), (k)(5) through (9), (l), (o), and (p) of this section, or if fishing under a NE multispecies DAS, if fishing under the small vessel exemption specified in § 648.82(b)(3), or if fishing under a scallop state waters exemption specified in § 648.54, or if fishing under a scallop DAS in accordance with paragraph (o) of this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(iii) *Large Mesh vessels*. When fishing in the SNE regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 648.82(b)(8) and (9) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel or used by a vessel fishing under a DAS in the Large Mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(3) *Exemptions*—(i) *Species exemptions*. (A) Through April 30, 2003, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (k)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(B) Beginning May 1, 2003, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraph (k)(2) of this section may not use nets with mesh size less than 3 inches (7.62 cm), unless exempted pursuant to paragraph (k)(4) of this section, and may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake—up to 10,000 lb (4,536 kg), and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (k)(3)(ii) of this section and with the possession limit restrictions specified under § 648.86. Nets may not have a mesh size of less than 3-inch (7.62-cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length, and counting the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length.

(ii) *Possession and net stowage requirements*. Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (k)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (k)(2)(i) of this section. Vessels fishing for the exempted species identified in paragraph (k)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea ravens; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts—up to 10 percent, by weight, of all other species on board.

(4) *Addition or deletion of exemptions*. Same as under paragraph (j)(8) of this section.

(5) *SNE Monkfish and Skate Trawl Exemption Area*. A vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (k)(5)(i) of this section. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10′ N. lat., and bounded on the west by the eastern boundary of the Mid-Atlantic Regulated Mesh Area.

(i) *Requirements*. (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish, skates, and the incidentally caught species and amounts specified in paragraph (k)(3) of this section.

(B) All trawl nets must have a minimum mesh size of 8-inch (20.3-cm) square or diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net.

(ii) [Reserved]

(6) *SNE Monkfish and Skate Gillnet Exemption Area*. A vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (k)(6)(i) of this section. The SNE Monkfish and Skate Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the eastern boundary of the Mid-Atlantic Regulated Mesh Area.

(i) *Requirements*. (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish, skates, and the bycatch species and amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (k)(6)(i)(B) of this section must be stowed as specified in § 648.23(b).

(ii) [Reserved]

(7) *SNE Dogfish Gillnet Exemption Area*. A gillnet vessel may fish in the SNE Dogfish Gillnet Fishery Exemption

Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (k)(7)(i) of this section. The SNE Dogfish Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long. south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the eastern boundary of the Mid-Atlantic Regulated Mesh Area.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land dogfish and the bycatch species and amounts specified in paragraph (k)(3) of this section.

(B) All gillnets must have a minimum mesh size of 6-inch (15.24-cm) diamond mesh throughout the net.

(C) Fishing is confined to May 1 through October 31.

(ii) [Reserved]

(8) *SNE Mussel and Sea Urchin Dredge Exemption.* A vessel may fish with a dredge in the SNE Regulated Mesh Area, provided that any dredge on board the vessel does not exceed 8 ft (2.44 m) measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins.

(9) *SNE Little Tunny Gillnet Exemption Area.* A vessel may fish with gillnet gear in the SNE Little Tunny Gillnet Exemption Area when not operating under a NE multispecies DAS with mesh size smaller than the minimum required in the SNE Regulated Mesh Area, if the vessel complies with the requirements specified in paragraph (k)(9)(i) of this section. The SNE Little Tunny Gillnet Exemption Area is defined by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI) southwesterly through Fishers Island, NY; to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY; southeasterly to 41°06.5′ N. lat. and 71°50.2′ W. long.; east-northeast through Block Island, RI, to 41°15′ N. lat. and 71°07′ W. long.; then due north to the intersection of the RI-MA shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may fish only for, possess on board, or land little tunny and the allowable incidental species and amounts specified in paragraph (k)(3) and, if applicable, paragraph (k)(9)(i)(B) of this section. Vessels fishing under this exemption may not possess regulated species.

(B) A vessel may possess bonito as an allowable incidental species, provided an exempted fishing permit is obtained from the Highly Migratory Species Division (HMS), Office of Sustainable Fisheries, NMFS, Gloucester, MA. The HMS reserves the authority to cap the number of participants who retain bonito as allowable incidental species should conservation and/or protected resource concerns develop.

(C) The vessel must have a letter of authorization issued by the Regional Administrator on board.

(D) All gillnets must have a minimum mesh size of 5.5-inch (13.97-cm) diamond mesh throughout the net.

(E) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (k)(9)(i)(D) of this section must be stowed in accordance with one of the methods described under § 648.23(b) while fishing under this exemption.

(F) Fishing is confined to September 1 through October 31.

(ii) The Regional Administrator shall conduct periodic sea sampling to evaluate the likelihood of gear interactions with protected resources.

(l) *Mid-Atlantic Regulated Mesh Area*—(1) *Area definition.* The Mid-Atlantic Regulated Mesh Area is that area bounded on the east by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY; to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY, southeasterly to the intersection of the 3-nautical mile line east of Montauk Point; southwesterly along the 3-nautical mile line to the intersection of 72°30′ W. long.; and south along that line to the intersection of the outer boundary of the EEZ.

(2) *Gear restrictions*—(i) *Minimum mesh size.* Except as provided in this paragraph (l)(2)(i), and unless otherwise restricted under paragraph (l)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine, or midwater trawl in use or available for immediate use, as described in § 648.23(b), by a vessel fishing under a DAS in the NE multispecies DAS program in the Mid-Atlantic Regulated Mesh Area shall be that specified by § 648.104(a). This restriction does not apply to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Large Mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 648.82(b)(8) and (9) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(3) *Net stowage exemption.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (l)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (l)(2)(i) of this section.

(4) *Addition or deletion of exemptions.* Same as under paragraph (j)(8) of this section.

(m) *Midwater trawl gear exemption.* Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size specified in this section, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM or GB Regulated Mesh Areas, as defined in § 648.80(j)(1) and (2), and in the Mid-Atlantic Regulated Mesh Area described in § 648.81(l)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, or mackerel in areas north of 42°20′ N. lat. and in the areas described in § 648.81(j)(1) and (2), (k)(1), and (l)(1); and Atlantic herring, blueback herring, mackerel, or squid in all other areas south of 42°20′ N. lat.;

(4) The vessel does not fish for, possess, or land NE multispecies; and

(5) The vessel carries a NMFS-approved sea sampler/observer, if requested by the Regional Administrator.

(n) *Restrictions on gear and methods of fishing*—(1) *Net obstruction or constriction.* Except as provided in paragraph (n)(5) of this section, a fishing vessel subject to minimum mesh size restrictions shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one

bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. ''The top of the trawl net'' means the 50 percent of the net that (in a hypothetical situation) is not in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (n)(1), head ropes are not considered part of the top of the trawl net.

(2) *Net obstruction or constriction.* (i) Except as provided in paragraph (n)(5) of this section, a fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net subject to minimum mesh size restrictions, as defined in paragraph (n)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) A fishing vessel may not use a net capable of catching multispecies if the bars entering or exiting the knots twist around each other.

(3) *Pair trawl prohibition.* No vessel may fish for NE multispecies while pair trawling, or possess or land NE multispecies that have been harvested by means of pair trawling.

(4) *Brush-sweep trawl prohibition.* No vessel may fish for, possess, or land NE multispecies while fishing with, or while in possession of, brush-sweep trawl gear.

(5) *Net strengthener restrictions when fishing for or possessing small-mesh multispecies*—(i) *Nets of mesh size less than 2.5 inches (6.35 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM, GB, SNE, or Mid-Atlantic Regulated Mesh Areas, as defined in paragraphs (j), (k), and (l) of this section, with nets of mesh size smaller than 2.5 inches (6.35 cm), as measured by methods specified in § 648.80(f), may use net strengtheners (covers as described at § 648.23(d)), provided that the net strengthener for nets of mesh size smaller than 2.5 inches (6.35 cm) complies with the provisions specified under § 648.23(d).

(ii) *Nets of mesh size equal to or greater than 2.5 inches (6.35 cm) but less than 3 inches (7.62).* A vessel lawfully fishing for small-mesh multispecies in the GOM, GB, SNE, or Mid-Atlantic Regulated Mesh Areas, as defined in paragraphs (j), (k), and (l) of this section, with nets with mesh size equal to or greater than 2.5 inches (6.35 cm) but less than 3 inches (7.62 cm) (as measured by methods specified in § 648.80(f), and as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) may use a net strengthener (i.e., outside net), provided the net strengthener does not have an effective mesh opening of less than 6 inches (15.24 cm), diamond or square mesh, as measured by methods specified in § 648.80(f). The inside net (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) must not be more than 2 ft (61 cm) longer than the outside net, must be the same circumference or smaller than the smallest circumference of the outside net, and must be the same mesh configuration (i.e., both square or both diamond mesh) as the outside net.

(o) *Scallop vessels.* (1) Except as provided in paragraph (o)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a NE multispecies combination vessel permit or a scallop multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(h), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and provided the vessel has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

(2) Combination vessels fishing under a NE multispecies DAS are subject to the gear restriction specified in § 648.80 and may possess and land unlimited amounts of regulated species, unless otherwise restricted by § 648.86. Such vessels may simultaneously fish under a scallop DAS.

(p) *State waters winter flounder exemption.* Any vessel issued a NE multispecies permit may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (j)(2), (k)(2), and (l)(2) of this section, provided that:

(1) The vessel has on board a certificate approved by the Regional Administrator and issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size for winter flounder.

(2) Fishing is conducted exclusively in the waters of the state from which the certificate was obtained.

(3) The state's winter flounder plan has been approved by the Commission as being in compliance with the Commission's winter flounder fishery management plan.

(4) The state elects, by a letter to the Regional Administrator, to participate in the exemption program described by this section.

(5) The vessel does not enter or transit the EEZ.

(6) The vessel does not enter or transit the waters of another state, unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8 kg) of winter flounder, and has at least one standard tote on board.

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small mesh species specified under paragraphs (j)(5)(i), (j)(9)(i), (k)(3), and (l)(3) of this section when fishing in the areas specified under paragraphs (j)(5), (j)(9), (k)(1), and (l)(1) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters may also possess and retain skate as incidental take in this fishery.

(9) The vessel complies with all other applicable requirements.

7. In § 648.81, paragraphs (a) through (i), (n) and (o) are suspended, and paragraphs (p) through (w) are added to read as follows:

§ 648.81 Closed areas.

* * * * *

(p) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (p)(2) and (s) of this section:

CLOSED AREA 1

Point	N. Lat.	W. Long.
CI1	41°30′	69°23′
CI2	40°45′	68°45′
CI3	40°45′	68°30′
CI4	41°30′	68°30′
CI1	41°30′	69°23′

(2) Paragraph (p)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies; or

(ii) Fishing with or using pelagic longline gear or pelagic hook- and line gear or harpoon gear, provided that

there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies; or

(iii) Fishing with pelagic midwater trawl gear, consistent with § 648.80(d), provided that the Regional Administrator shall review information pertaining to the bycatch of regulated NE multispecies and, if the Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation, the Regional Administrator may place restrictions and conditions in the letter of authorization for any or all individual fishing operations or, after consulting with the Council, suspend or prohibit any or all midwater trawl activities in the closed areas.

(q) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (q)(2) of this section:

CLOSED AREA II

Point	N. Lat.	W. Long.
CII1	41°00′	67°20′
CII2	41°00′	66°35.8′
G5	41°18.6′	66°24.8′ (the U.S.-Canada Maritime Boundary)
CII3	42°22′	67°20′ (the U.S.-Canada Maritime Boundary)
CII1	41°00′	67°20′

(2) Paragraph (q)(1) of this section does not apply to persons on fishing vessels or fishing vessels fishing with gears as described in paragraph (p)(2) of this section, or that are transiting the area, provided:

(i) The operator has determined that there is a compelling safety reason; and

(ii) The vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b).

(r) *Nantucket Lightship Closed Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (r)(2) and (s) of this section:

NANTUCKET LIGHTSHIP CLOSED AREA

Point	N. Lat.	W. Long.
G10	40°50′	69°00′
CN1	40°20′	69°00′
CN2	40°20′	70°20′
CN3	40°50′	70°20′
G10	40°50′	69°00′

(2) Paragraph (r)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with gears as described in paragraph (p)(2) of this section;

(ii) Fishing with or using dredge gear designed and used to take surf clams or ocean quahogs, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies; or

(iii) Classified as charter, party or recreational vessel, provided that:

(A) If the vessel is a party or charter vessel, it has a letter of authorization issued by the Regional Administrator on board;

(B) Fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the fish are caught; and

(C) The vessel has no gear other than rod and reel or handline gear on board.

(s) *Transiting.* A vessel may transit Closed Area I, the Nantucket Lightship Closed Area, the GOM Rolling Closure Areas, the Eastern GOM Closure Area, the Western GOM Closure Area, and the Georges Bank Seasonal Closure Area, as defined in paragraphs (p)(1), (r)(1), (t)(1), (u)(1), (v)(1), and (w)(1), respectively, of this section, provided that it does not fish in these areas and its gear is stowed in accordance with the provisions of § 648.23(b). For gears for which stowage provisions are not specified at § 648.23(b), the gear must not be available for immediate use and must not have been recently used.

(t) *GOM Rolling Closure Areas.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in GOM Rolling Closure Areas III through V, as described in paragraphs (t)(1)(i) through (iii) of this section, for the times specified in paragraphs (t)(1)(i) through (iii) of this section, except as specified in paragraph (s) and paragraph (t)(2) of this section. A chart depicting these areas is available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter).

(i) *Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in paragraph (t)(1) of this section apply to Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA III

[May 1–May 31]

Point	N. Lat.	W. Long.*
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM23	42°30′	70°00′
GM6	42°30′	68°30′
GM14	43°30′	68°30′
GM10	43°30′	(4)

* or other intersecting line:
1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.
4 Maine shoreline.

(ii) *Rolling Closure Area IV.* From June 1 through June 30, the restrictions specified in paragraph (t)(1) of this section apply to Rolling Closure Area IV, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA IV

[June 1–June 30]

Point	N. Lat.	W. Long.*
GM9	42°30′	(1)
GM23	42°30′	70°00′
GM17	43°30′	70°00′
GM19	43°00′	(2)
GM20	44°00′	(2)
GM21	44°00′	69°00′
GM22	(3)	69°00′

* or other intersecting line:
1 Massachusetts shoreline.
2 U.S.-Canada maritime boundary.
3 Maine shoreline.

(2) Paragraph (t)(1) of this section does not apply to persons aboard fishing vessels or fishing vessels:

(i) That have not been issued a NE multispecies permit and that are fishing exclusively in state waters;

(ii) That are fishing with or using exempted gear as defined under this part, subject to the restrictions on midwater trawl gear in paragraph (p)(2)(iii) of this section, and excluding pelagic gillnet gear capable of catching NE multispecies, except for vessels fishing with a single pelagic gillnet, not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.62 cm), provided:

(A) The net is attached to the boat and fished in the upper two-thirds of the water column;

(B) The net is marked with the owner's name and vessel identification number;

(C) There is no retention of regulated species; and

(D) There is no other gear on board capable of catching NE multispecies;

(iii) That are fishing under charter/party or private recreational regulations, provided that:

(A) For vessels fishing under charter/party regulations, it has on board a letter of authorization issued by the Regional Administrator, which is valid through July 31, 2002;

(B) Fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the fish are caught;

(C) The vessel has no gear other than rod and reel or handline on board; and

(D) The vessel does not use any NE multispecies DAS during the entire period of enrollment.

(iv) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(j)(11), provided the vessel does not retain any regulated NE multispecies during a trip, or on any part of a trip.

(v) That are fishing in the Raised Footrope Trawl Exempted Whiting Fishery, as specified in § 648.80(j)(15), and in the Gulf of Maine Rolling Closure Area V, as specified in paragraph (t)(1)(iii) of this section.

(u) *Cashes Ledge Closure Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (s) and (u)(2) of this section:

CASHES LEDGE CLOSURE AREA [1]

Point	N. Lat.	W. Long.
CL1	43°07′	69°02′
CL2	42°49.5′	68°46′
CL3	42°46.5′	68°50.5′
CL4	42°43.5′	68°58.5′
CL5	42°42.5′	69°17.5′
CL6	42°49.5′	69°26′
CL1	43°07′	69°02′

[1] A chart depicting this area is available from the Regional Administrator upon request (*see* Table 1 to § 600.502 of this chapter).

(2) Paragraph (u)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (t)(2)(ii) and (iii) of this section.

(v) *Western GOM Area Closure.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Western GOM Area Closure (a chart depicting this area is available from the Regional Administrator upon request, see Table 1 in § 600.502), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (s) and (v)(2) of this section:

WESTERN GOM AREA CLOSURE

Point	N. Lat.	W. Long.
WGM1	42°15′	70°15′
WGM2	42°15′	69°55′
WGM3	43°15′	69°55′
WGM4	43°15′	70°15′
WGM1	42°15′	70°15′

(2) Paragraph (v)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (t)(2)(ii) and (iii) of this section.

(w) *Georges Bank Seasonal Closure Area.* (1) From May 1 through May 31, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching multispecies, unless otherwise allowed in this part, may be in the area known as the Georges Bank Seasonal Closure Area, as defined as the straight lines connecting the following points in the order stated, except as specified in paragraphs (s) and (w)(2) of this section:

GEORGES BANK SEASONAL CLOSURE AREAS

[May 1–May 31]

Point	N. Lat.	W. Long.
GB1	42°00′	(1)
GB2	42°00′	67°20′
GB3	41°30′	67°20′
GB4	41°30′	69°23′
GB5	(2)	69°00′
GB6	41°00′	69°00′
GB7	41°00′	70°00′
GB1	42°00′	(1)

[1] Cape Cod shoreline on Atlantic Ocean.
[2] 2 Western boundary of Closed Area 1.

(2) Paragraph (w)(1) of this section does not apply to persons on fishing vessels or to fishing vessels:

(i) That meet the criteria in paragraphs (t)(2)(i) or (ii) of this section;

(ii) That are fishing as charter/party or recreational vessels; or

(iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(j)(11), provided the vessel uses an 8-inch (20.3-cm) twine top and complies with the NE multispecies possession restrictions for scallop vessels specified at § 648.80(o).

8. In § 648.82, paragraphs (b)(6), (b)(7), (e), (k)(1)(i), (k)(1)(ii), and (k)(1)(v) are suspended; and paragraphs (b)(8), (b)(9), (k)(1)(viii), (k)(1)(ix), and (l) are added to read as follows:

§ 648.82 Effort-control program for multispecies limited access vessels.

* * * * *

(b) * * *

(8) *Large Mesh Individual DAS category*—(i) *DAS allocation.* A vessel fishing under the Large Mesh Individual DAS category shall be allocated a DAS increase of 36 percent over the DAS allocations specified in paragraph (b)(1)(i) of this section (this includes the proration factor for 1996). To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish with gillnet gear with a minimum size of 7-inch (17.78-cm) diamond mesh or with trawl gear with a minimum mesh size of 8-inch (20.32-cm) diamond mesh, for the entire year, as described under § 648.80(j)(3)(vi), (k)(2)(iii), and (l)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the large Mesh Individual DAS category. Any vessel that is initially assigned to the Individual DAS, Fleet DAS, or Small Vessel category may request and be granted a switch into this category as specified in § 648.4(a)(1)(i)(I)(*2*).

(9) *Large Mesh Fleet DAS category*—(i) *DAS allocation.* A vessel fishing under the Large Mesh Fleet DAS category shall be allocated 120 DAS. To be eligible to fish under the Large Mesh Fleet DAS category, a vessel while fishing under this category must fish with gillnet gear with a minimum mesh size of 7-inch (17.78-cm) diamond mesh or trawl gear with a minimum mesh size of 8-inch (20.32-cm) diamond mesh, as described under § 648.80(j)(3)(vi), (k)(2)(iii), and (l)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the Large Mesh Fleet DAS category. Any vessel that is initially assigned to the Individual DAS, Fleet DAS, or Small Vessel category may request and be granted a switch into this category as specified in § 648.4(a)(1)(i)(I)(*2*).

* * * * *

(k) * * *

(1) * * *

(viii) *Number and size of nets.* NE multispecies limited access vessels fishing under a NE multispecies DAS may not fish with, haul, possess, or deploy more than 50 stand-up (roundfish) gillnets or 100 tie-down (flatfish) nets, except as provided in paragraph (k)(1)(i)(A) of this section. Vessels may fish any combination of roundfish and flatfish gillnets up to 100 nets, provided that the number of roundfish and flatfish gillnets does not exceed the limitations specified in this paragraph (k)(1)(viii). Nets may not be longer than 300 ft (91.44 m), or 50 fathoms, in length.

(A) Monkfish limited access vessels fishing with a valid monkfish Category C or D permit (i.e., vessels that possess both a monkfish and multispecies limited access permit) that obtain an annual designation as a Day gillnet vessel and that are fishing under a monkfish DAS, may fish up to 150 monkfish nets as specified in § 648.92(b)(8)(iv), provided the vessels complies with the minimum gillnet mesh size restriction of 10-inch (25.4-cm) mesh, as specified in § 648.91(c)(1)(iii).

(B) [Reserved]

(ix) *Removal of nets from water.* Gillnets must be removed from the water when the annual NE multispecies DAS allocated has been used or the maximum allowable quarterly NE multispecies DAS, as specified in paragraph (l) of this section, have been used.

* * * * *

(l) *Accrual of DAS and restrictions on NE multispecies DAS use*—(1) *15-hour minimum for trips of 3 to 15 hours.* For vessels fishing under a NE multispecies DAS, at any time during a fishing trip under a NE multispecies DAS, DAS shall be accrued in the following manner: For trips less than or equal to 3 hours in duration (from the time a vessel lawfully calls into the DAS program until the time it lawfully calls out of the DAS program), DAS will be deducted from the vessel's annual NE multispecies DAS allocation on an actual time basis (to the nearest minute) up to 3 hours. For trips greater than 3 hours and less than or equal to 15 hours, 15 hours will be deducted from the vessel's annual NE multispecies DAS allocation.

(2) *Quarterly restriction of NE multispecies DAS use.* Vessels may use no more than 25 percent of their annual NE multispecies DAS allocation, as specified under § 648.82(b) during the first quarter (May–July) of the fishing year (e.g., for the period May through July, a Fleet DAS vessel would be restricted to using no more than 22 NE multispecies DAS from its annual allocation of 88 DAS). End-of-year carry-over NE multispecies DAS accrued from the May 1, 2001, through April 30, 2002, fishing year, as specified in § 648.82(a)(1), may not be included when determining 25 percent of a vessel's annual DAS allocation under this provision.

9. In § 648.86, paragraphs (b)(4), (d)(2), and (e)(2) are suspended, and paragraphs (b)(5), (d)(4), and (e)(4) are added to read as follows:

§ 648.86 NE multispecies possession restrictions.

* * * * *

(b) * * *

(5) *Exemption.* A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (h)(1) of this section when fishing south of the GOM Regulated Mesh Area as defined in § 648.80(j)(1), provided that it does not fish in the GOM Regulated Mesh Area for a minimum of 30 consecutive days (when fishing under the multispecies DAS program), and has on board an authorization letter issued by the Regional Administrator. Vessels exempt from the landing limit requirement may transit the GOM Regulated Mesh Area, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b).

* * * * *

(d) * * *

(4) *Possession limit for vessels participating in the northern shrimp fishery.* Owners and operators of vessels participating in the Small-Mesh Northern Shrimp Fishery Exemption Area, as described in § 648.80(j)(5), with a vessel issued a valid Federal NE multispecies permit specified under § 648.4(a)(1), may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(e) * * *

(4) *Possession limit for vessels participating in the northern shrimp fishery.* Owners or operators of vessels fishing in the Small-mesh Northern Shrimp Fishery Exemption Area under the exemption described in § 648.80(j)(5), with a vessel issued a valid Federal NE multispecies permit specified under § 648.4(a)(1), may possess on board or land silver hake and offshore hake, combined, up to 100 lb (45.36 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

10. In § 648.89, paragraphs (b) through (e) are suspended and paragraphs (f) through (i) are added to read as follows:

§ 648.89 Recreational and charter/party restrictions.

* * * * *

(f)(1) *Recreational minimum fish sizes.* Persons aboard charter or party vessels permitted under this part and not fishing under the NE multispecies DAS program, and private recreational fishing vessels in the EEZ, may not retain fish smaller than the minimum fish sizes, measured in total length (TL) as follows:

MINIMUM FISH SIZES (TL) FOR CHARTER, PARTY, AND PRIVATE RECREATIONAL VESSELS

Species	Sizes (inches)
Cod	23 (58.42 cm)
Haddock	21 (53.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
Atlantic halibut	36 (91.4 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback).	12 (30.5 cm)
Redfish	9 (22.9 cm)

(2) *Exception.* Vessels may possess fillets less than the minimum size specified if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(g) *Possession restrictions*—(1) *Cod and haddock*—(i) GOM Regulated Mesh Area. For charter, party, and private recreational vessels fishing any part of a trip in the GOM Regulated Mesh Area as defined in § 648.80(j)(1), each person on the vessel may possess no more than 10 cod and/or haddock, combined, in, or harvested from the EEZ.

(ii) Areas other than the GOM Regulated Mesh Area. For a private recreational vessel fishing in areas other than the GOM Regulated Mesh Area, each person on the vessel may possess no more than 10 cod and/or haddock, combined, in, or harvested from the EEZ.

(iii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet,

such fillet shall be deemed to be from one whole fish.

(iv) Cod and haddock harvested by private recreational vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

(v) Cod and haddock must be stored so as to be readily available for inspection.

(2) *Atlantic halibut.* Charter and party vessels permitted under this part, and private recreational fishing vessels fishing in the EEZ, may not possess on board more than one Atlantic halibut.

(h) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, or otherwise transfer for a commercial purpose, NE multispecies caught or landed by charter or party vessels permitted under this part not fishing under a DAS or private recreational fishing vessels fishing in the EEZ.

(i) *Charter/party vessel restrictions on fishing in Gulf of Maine closed areas and the Nantucket Lightship Closed Area.*

(1) *Gulf of Maine Closed Areas.* Charter/party vessels issued a Federal multispecies permit and fishing under the charter/party provisions may not fish in the Gulf of Maine closed areas specified in § 648.81(t)(1), (u)(1), and (v)(1) during the time periods specified in those sections, unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to §§ 648.81(t)(2)(iii) and 648.89(i)(3). The letter of authorization is valid through July 31, 2002.

(2) *Nantucket Lightship Closed Area.* Charter/party vessels may not fish in the Nantucket Lightship Closed Area specified in § 648.81(r)(1) unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to §§ 648.81(r)(2)(iii) and 648.89(i)(3).

(3) *Letters of Authorization.* To obtain either of the letters of authorization specified in § 648.89(i)(1) and (2), a vessel owner must request a letter from the Northeast Regional Office of NMFS, either in writing or by phone (see Table 1 to § 600.502). As a condition of these letters of authorization, the vessel owner must agree to the following:

(i) The letter of authorization must be carried on board the vessel during the period of participation;

(ii) Fish harvested or possessed by the vessel may not be sold or intended for trade, barter or sale, regardless of where the fish are caught;

(iii) The vessel has no gear other than rod and reel or handline gear on board; and

(iv) For the Gulf of Maine closure areas, charter/party vessels may not use any NE multispecies DAS during the period of participation.

11. In § 648.91, paragraphs (c)(1)(i) and (ii) are suspended and paragraphs (c)(1)(v) and (vi) are added to read as follows:

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(c) * * *

(1) * * *

(v) *Trawl nets while on a monkfish DAS.* Except as provided in paragraph (c)(1)(vi) of this section, the minimum mesh size for any trawl net, including beam trawl nets, used by a vessel fishing under a monkfish DAS is 10-inch (25.4-cm) square or 12-inch (30.5-cm) diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net. The minimum mesh size for the remainder of the trawl net is the regulated mesh size specified under § 648.80(j)(3), (j)(4), (k)(2)(i), or (l)(2)(i) of the Northeast multispecies regulations, depending upon and consistent with the NE multispecies regulated mesh area being fished.

(vi) *Trawl nets while on a monkfish and NE multispecies DAS.* For vessels issued a Category C or D limited access monkfish permit and fishing with trawl gear under both a monkfish and NE multispecies DAS, the minimum mesh size is that allowed under regulations governing mesh size for the NE Multispecies FMP at § 648.80(j)(3), (j)(4), (k)(2)(i), or (l)(2)(i), depending upon, and consistent with, the NE multispecies regulated mesh area being fished.

* * * * *

12. In § 648.92, paragraphs (b)(8)(i), and (ii) are suspended and paragraph (b)(8)(vi) is added to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(8) * * *

(vi) *Number and size of nets.* A vessel issued a monkfish limited access permit or fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 150 gillnets. A vessel issued a NE multispecies limited access permit and a limited access monkfish permit, or fishing under a monkfish DAS, may fish any combination of monkfish, roundfish, and flatfish gillnets, up to 150 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets is consistent with the limitations of § 648.82(k)(1)(viii). Nets may not be longer than 300 ft (91.44 m), or 50 fathoms, in length.

[FR Doc. 02–10488 Filed 4–25–02; 1:12 pm]

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Monday, April 29, 2002

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 1432/P.L. 107–160

To designate the facility of the United States Postal Service located at 3698 Inner Perimeter Road in Valdosta, Georgia, as the ''Major Lyn McIntosh Post Office Building''. (Apr. 18, 2002; 116 Stat. 123)

H.R. 1748/P.L. 107–161

To designate the facility of the United States Postal Service located at 805 Glen Burnie Road in Richmond, Virginia, as the ''Tom Bliley Post Office Building''. (Apr. 18, 2002; 116 Stat. 124)

H.R. 1749/P.L. 107–162

To designate the facility of the United States Postal Service located at 685 Turnberry Road in Newport News, Virginia, as the ''Herbert H. Bateman Post Office Building''. (Apr. 18, 2002; 116 Stat. 125)

H.R. 2577/P.L. 107–163

To designate the facility of the United States Postal Service located at 310 South State Street in St. Ignace, Michigan, as the ''Bob Davis Post Office Building''. (Apr. 18, 2002; 116 Stat. 126)

H.R. 2876/P.L. 107–164

To designate the facility of the United States Postal Service located in Harlem, Montana, as the ''Francis Bardanouve United States Post Office Building''. (Apr. 18, 2002; 116 Stat. 127)

H.R. 2910/P.L. 107–165

To designate the facility of the United States Postal Service located at 3131 South Crater Road in Petersburg, Virginia, as the ''Norman Sisisky Post Office Building''. (Apr. 18, 2002; 116 Stat. 128)

H.R. 3072/P.L. 107–166

To designate the facility of the United States Postal Service located at 125 Main Street in Forest City, North Carolina, as the ''Vernon Tarlton Post Office Building''. (Apr. 18, 2002; 116 Stat. 129)

H.R. 3379/P.L. 107–167

To designate the facility of the United States Postal Service located at 375 Carlls Path in Deer Park, New York, as the ''Raymond M. Downey Post Office Building''. (Apr. 18, 2002; 116 Stat. 130)

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1, 2 (2 Reserved)	(869–048–00001–1)	9.00	Jan. 1, 2002
3 (1997 Compilation and Parts 100 and 101)	(869–044–00002–4)	36.00	[1] Jan. 1, 2001
4	(869–048–00003–8)	9.00	[4] Jan. 1, 2002
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§§ 1.0-1–1.60	(869–044–00077–6)	43.00	Apr. 1, 2001
§§ 1.61–1.169	(869–044–00078–4)	57.00	Apr. 1, 2001
§§ 1.170–1.300	(869–044–00079–2)	52.00	Apr. 1, 2001
§§ 1.301–1.400	(869–044–00080–6)	41.00	Apr. 1, 2001
§§ 1.401–1.440	(869–044–00081–4)	58.00	Apr. 1, 2001
§§ 1.441-1.500	(869-044-00082-2)	45.00	Apr. 1, 2001
§§ 1.501–1.640	(869–044–00083–1)	44.00	Apr. 1, 2001
§§ 1.641–1.850	(869–044–00084–9)	53.00	Apr. 1, 2001
§§ 1.851–1.907	(869–044–00085–7)	54.00	Apr. 1, 2001
§§ 1.908–1.1000	(869–044–00086–5)	53.00	Apr. 1, 2001
§§ 1.1001–1.1400	(869–044–00087–3)	55.00	Apr. 1, 2001
§§ 1.1401–End	(869–044–00088–1)	58.00	Apr. 1, 2001
2–29	(869–044–00089–0)	54.00	Apr. 1, 2001
30–39	(869–044–00090–3)	37.00	Apr. 1, 2001
40–49	(869–044–00091–1)	25.00	Apr. 1, 2001
50–299	(869–044–00092–0)	23.00	Apr. 1, 2001
300–499	(869–044–00093–8)	54.00	Apr. 1, 2001
500–599	(869–044–00094–6)	12.00	[5] Apr. 1, 2001
600–End	(869–044–00095–4)	15.00	Apr. 1, 2001
27 Parts:			
1–199	(869–044–00096–2)	57.00	Apr. 1, 2001

Title	Stock Number	Price	Revision Date
200–End	(869–044–00097–1)	26.00	Apr. 1, 2001
28 Parts:			
0-42	(869–044–00098–9)	55.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001
29 Parts:			
0–99	(869–044–00100–4)	45.00	July 1, 2001
100–499	(869–044–00101–2)	14.00	[6]July 1, 2001
500–899	(869–044–00102–1)	47.00	[6]July 1, 2001
900–1899	(869–044–00103–9)	33.00	July 1, 2001
1900–1910 (§§ 1900 to 1910.999)	(869–044–00104–7)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869–044–00105–5)	42.00	July 1, 2001
1911–1925	(869–044–00106–3)	20.00	[6]July 1, 2001
1926	(869–044–00107–1)	45.00	July 1, 2001
1927–End	(869–044–00108–0)	55.00	July 1, 2001
30 Parts:			
1–199	(869–044–00109–8)	52.00	July 1, 2001
200–699	(869–044–00110–1)	45.00	July 1, 2001
700–End	(869–044–00111–7)	53.00	July 1, 2001
31 Parts:			
0–199	(869–044–00112–8)	32.00	July 1, 2001
200–End	(869–044–00113–6)	56.00	July 1, 2001
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–044–00114–4)	51.00	[6]July 1, 2001
191–399	(869–044–00115–2)	57.00	July 1, 2001
400–629	(869–044–00116–8)	35.00	[6]July 1, 2001
630–699	(869–044–00117–9)	34.00	July 1, 2001
700–799	(869–044–00118–7)	42.00	July 1, 2001
800–End	(869–044–00119–5)	44.00	July 1, 2001
33 Parts:			
1–124	(869–044–00120–9)	45.00	July 1, 2001
125–199	(869–044–00121–7)	55.00	July 1, 2001
200–End	(869–044–00122–5)	45.00	July 1, 2001
34 Parts:			
1–299	(869–044–00123–3)	43.00	July 1, 2001
300–399	(869–044–00124–1)	40.00	July 1, 2001
400–End	(869–044–00125–0)	56.00	July 1, 2001
35	(869–044–00126–8)	10.00	[6]July 1, 2001
36 Parts			
1–199	(869–044–00127–6)	34.00	July 1, 2001
200–299	(869–044–00128–4)	33.00	July 1, 2001
300–End	(869–044–00129–2)	55.00	July 1, 2001
37	(869–044–00130–6)	45.00	July 1, 2001
38 Parts:			
0–17	(869–044–00131–4)	53.00	July 1, 2001
18–End	(869–044–00132–2)	55.00	July 1, 2001
39	(869–044–00133–1)	37.00	July 1, 2001
40 Parts:			
1–49	(869–044–00134–9)	54.00	July 1, 2001
50–51	(869–044–00135–7)	38.00	July 1, 2001
52 (52.01–52.1018)	(869–044–00136–5)	50.00	July 1, 2001
52 (52.1019–End)	(869–044–00137–3)	55.00	July 1, 2001
53–59	(869–044–00138–1)	28.00	July 1, 2001
60 (60.1–End)	(869–044–00139–0)	53.00	July 1, 2001
60 (Apps)	(869–044–00140–3)	51.00	July 1, 2001
61–62	(869–044–00141–1)	35.00	July 1, 2001
63 (63.1–63.599)	(869–044–00142–0)	53.00	July 1, 2001
63 (63.600–63.1199)	(869–044–00143–8)	44.00	July 1, 2001
63 (63.1200-End)	(869–044–00144–6)	56.00	July 1, 2001
64–71	(869–044–00145–4)	26.00	July 1, 2001
72–80	(869–044–00146–2)	55.00	July 1, 2001
81–85	(869–044–00147–1)	45.00	July 1, 2001
86 (86.1–86.599–99)	(869–044–00148–9)	52.00	July 1, 2001
86 (86.600–1–End)	(869–044–00149–7)	45.00	July 1, 2001
87–99	(869–044–00150–1)	54.00	July 1, 2001
100–135	(869–044–00151–9)	38.00	July 1, 2001
136–149	(869–044–00152–7)	55.00	July 1, 2001
150–189	(869–044–00153–5)	52.00	July 1, 2001
190–259	(869–044–00154–3)	34.00	July 1, 2001
260–265	(869–044–00155–1)	45.00	July 1, 2001
266–299	(869–044–00156–0)	45.00	July 1, 2001
300–399	(869–044–00157–8)	41.00	July 1, 2001
400–424	(869–044–00158–6)	51.00	July 1, 2001
425–699	(869–044–00159–4)	55.00	July 1, 2001
700–789	(869–044–00160–8)	55.00	July 1, 2001
790–End	(869–044–00161–6)	44.00	July 1, 2001
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–044–00162–4)	22.00	July 1, 2001
101	(869–044–00163–2)	45.00	July 1, 2001
102–200	(869–044–00164–1)	33.00	July 1, 2001
201–End	(869–044–00165–9)	24.00	July 1, 2001
42 Parts:			
1–399	(869–044–00166–7)	51.00	Oct. 1, 2001
400–429	(869–044–00167–5)	59.00	Oct. 1, 2001
430–End	(869–044–00168–3)	58.00	Oct. 1, 2001
43 Parts:			
1–999	(869–044–00169–1)	45.00	Oct. 1, 2001
1000–end	(869–044–00170–5)	56.00	Oct. 1, 2001
44	(869–044–00171–3)	45.00	Oct. 1, 2001
45 Parts:			
1–199	(869–044–00172–1)	53.00	Oct. 1, 2001
200–499	(869–044–00173–0)	31.00	Oct. 1, 2001
500–1199	(869–044–00174–8)	45.00	Oct. 1, 2001
1200–End	(869–044–00175–6)	55.00	Oct. 1, 2001
46 Parts:			
1–40	(869–044–00176–4)	43.00	Oct. 1, 2001
41–69	(869–044–00177–2)	35.00	Oct. 1, 2001
70–89	(869–044–00178–1)	13.00	Oct. 1, 2001
90–139	(869–044–00179–9)	41.00	Oct. 1, 2001
140–155	(869–044–00180–2)	24.00	Oct. 1, 2001
156–165	(869–044–00181–1)	31.00	Oct. 1, 2001
166–199	(869–044–00182–9)	42.00	Oct. 1, 2001
200–499	(869–044–00183–7)	36.00	Oct. 1, 2001
500–End	(869–044–00184–5)	23.00	Oct. 1, 2001
47 Parts:			
0–19	(869–044–00185–3)	55.00	Oct. 1, 2001
20–39	(869–044–00186–1)	43.00	Oct. 1, 2001
40–69	(869–044–00187–0)	36.00	Oct. 1, 2001
70–79	(869–044–00188–8)	58.00	Oct. 1, 2001
80–End	(869–044–00189–6)	55.00	Oct. 1, 2001
48 Chapters:			
1 (Parts 1–51)	(869–044–00190–0)	60.00	Oct. 1, 2001
1 (Parts 52–99)	(869–044–00191–8)	45.00	Oct. 1, 2001
2 (Parts 201–299)	(869–044–00192–6)	53.00	Oct. 1, 2001
3–6	(869–044–00193–4)	31.00	Oct. 1, 2001
7–14	(869–044–00194–2)	51.00	Oct. 1, 2001
15–28	(869–044–00195–1)	53.00	Oct. 1, 2001
29–End	(869–044–00196–9)	38.00	Oct. 1, 2001
49 Parts:			
1–99	(869–044–00197–7)	55.00	Oct. 1, 2001
100–185	(869–044–00198–5)	60.00	Oct. 1, 2001
186–199	(869–044–00199–3)	18.00	Oct. 1, 2001
200–399	(869–044–00200–1)	60.00	Oct. 1, 2001
400–999	(869–044–00201–9)	58.00	Oct. 1, 2001
1000–1199	(869–044–00202–7)	26.00	Oct. 1, 2001

Title	Stock Number	Price	Revision Date
1200–End	(869–044–00203–5)	21.00	Oct. 1, 2001
50 Parts:			
1–199	(869–044–00204–3)	63.00	Oct. 1, 2001
200–599	(869–044–00205–1)	36.00	Oct. 1, 2001
600–End	(869–044–00206–0)	55.00	Oct. 1, 2001
CFR Index and Findings Aids	(869–044–00047–4)	56.00	Jan. 1, 2001
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.