6–25–02 Tuesday
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Pages 42703–42980

Federal Register

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Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
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Presidential Documents

Title 3—

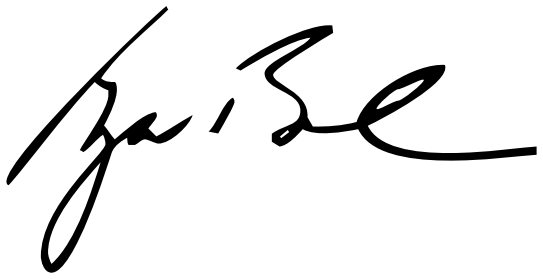
The President

Notice of June 21, 2002

Continuation of the National Emergency With Respect to the Western Balkans

On June 26, 2001, by Executive Order 13219, I declared a national emergency with respect to the Western Balkans pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions of persons engaged in, or assisting, sponsoring, or supporting, (i) extremist violence in the former Yugoslav Republic of Macedonia, and elsewhere in the Western Balkans region, or (ii) acts obstructing implementation of the Dayton Accords in Bosnia or United Nations Security Council Resolution 1244 of June 10, 1999, in Kosovo. Because the actions of these persons, which threaten the peace and international stabilization efforts in the Western Balkans, continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on June 26, 2001, and the measures adopted on that date to deal with that emergency must continue in effect beyond June 26, 2002. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the Western Balkans.

This Notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
June 21, 2002.

[FR Doc. 02–16145
Filed 6–24–02; 8:45 am]
Billing code 3195–01–P

Federal Register
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Tuesday, June 25, 2002

Presidential Documents

Title 3—

The President

Presidential Determination No. 02–23 of June 14, 2002

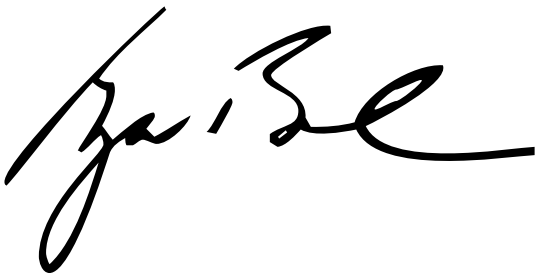
Suspension of Limitations Under the Jerusalem Embassy Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the ''Act''), I hereby determine that it is necessary to protect the national security interests of the United States to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act. My Administration remains committed to beginning the process of moving our embassy to Jerusalem.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the **Federal Register**.

This suspension shall take effect after transmission of this determination and report to the Congress.



THE WHITE HOUSE,
Washington, June 14, 2002.

[FR Doc. 02–16154
Filed 6–24–02; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 916

[Docket No. FV02–916–2 IFR]

Nectarines Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Nectarine Administrative Committee (committee) for the 2002–03 and subsequent fiscal periods from $0.20 to $0.19 per 25-pound container or container equivalent of nectarines handled. The committee locally administers the marketing order which regulates the handling of nectarines grown in California. Authorization to assess nectarine handlers enables the committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period runs from March 1 through the last day of February. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: June 26, 2002. Comments received by August 26, 2002, will be considered prior to issuance of a final rule.

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

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 124 and Order No. 916, both as amended (7 CFR part 916), regulating the handling of nectarines grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule decreases the assessment rate established for the committee for the 2002–03 and subsequent fiscal periods from $0.20 to $0.19 per 25-pound container or container equivalent of nectarines.

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

For the 2001–02 fiscal period, the committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on May 1, 2002, and unanimously recommended 2002–03 expenditures of $4,671,342 and an assessment rate of $0.19 per 25-pound container or container equivalent of nectarines. In comparison, last year's budgeted expenditures were $4,338,744. The recommended rate is $0.01 lower than the rate currently in effect.

The decrease was recommended because the crop is expected to be larger than estimated earlier this year. In early spring, the crop was estimated to be 22 million containers or container equivalents of nectarines. The crop is now estimated to be more than 23 million containers or container equivalents. Assessment income and funds from the committee's operating reserve will be adequate to cover approved committee expenses in 2002–03.

The major expenditures recommended by the committee for 2002–03 include $505,000 for salaries and benefits, $309,039 for general expenses, $1,050,000 for inspection, $138,018 for research, and $2,574,160 for domestic and international promotion.

Budgeted expenses for these items in 2001–02 were $423,176 for salaries and benefits, $157,821 for general expenses, $1,000,000 for inspection, $169,393 for research, and $2,429,000 for domestic and international promotion.

To determine the applicable 2002–03 assessment rate, the committee considered the total expenses of $4,671,342, and the assessable nectarines estimated at 23,248,000 25-pound containers or container equivalents. At that rate, assessment income for 2002–03 will be $4,417,120. The committee began 2002–03 with $684,368 in operating reserves and expects to end the fiscal period with $350,000. Section 916.42 authorizes a reserve equal to about one fiscal period's expenses. Funds from the committee's operating reserve will be kept within the maximum permitted.

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

Although this assessment rate would be in effect for an indefinite period, the committee will continue to meet prior to each fiscal period to recommend a budget of expenses and meet during each fiscal period to consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA.

Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The committee's 2002–03 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 300 California nectarine handlers subject to regulation under the order covering nectarines grown in California, and about 1,800 producers of nectarines grown in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

In the 2001 season, the average handler price received was $9.00 per container or container equivalent of nectarines. A handler would have to ship at least 555,556 containers or container equivalents of nectarines to have annual receipts of $5,000,000. Based on shipment data maintained by the committee's staff, it is estimated that small handlers of nectarines represent approximately 94 percent of the handlers within the industry.

In the 2001 season, the average producer price received was $5.50 per container or container equivalent of nectarines. A producer would have to produce at least 136,364 containers or container equivalents of nectarines to have annual receipts of $750,000. Based on data maintained by the committee's staff, it is estimated that small producers represent approximately 78 percent of the nectarine producers within the industry.

This rule decreases the assessment rate established for the committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.20 to $0.19 per 25-pound container or container equivalent of nectarines. The committee unanimously recommended 2002–03 expenditures of $4,671,342 and an assessment rate of $0.19 per 25-pound container or container equivalent of nectarines. The recommended assessment rate is $0.01 lower than the current rate. The quantity of assessable nectarines for the 2002–03 fiscal year is estimated at 23,248,000 25-pound containers or container equivalents. Thus, the $0.19 rate should provide $4,417,120 in assessment income. Income derived from handler assessments, along with other income and funds from the committee's authorized reserve would be adequate to cover budgeted expenses.

The major expenditures recommended by the committee for the 2002–03 year include $505,000 for salaries and benefits, $309,039 for general expenses, $1,050,000 for inspection, $138,018 for research, and $2,574,160 for domestic and international promotion.

Budgeted expenses for these items in 2001–02 were $423,176 for salaries and benefits, $157,821 for general expenses, $1,000,00 for inspection, $169,393 for research, $2,429,000 for domestic and international promotion.

The decrease was recommended because the crop is expected to be larger than estimated earlier in the year. The crop estimate in early spring was 22 million containers or container equivalents of nectarines. The crop is now estimated to be more than 23 million containers or container equivalents. The committee reviewed and unanimously recommended 2002–03 expenditures of $4,671,342.

Prior to arriving at this budget, the committee considered information and recommendations from various sources, including, but not limited to: the Management Services Committee, the Research Subcommittee, the International Programs Subcommittee, the Grade and Size Subcommittee, the Domestic Promotion Subcommittee, and the Grower Relations Subcommittee. The assessment rate of $0.19 per 25-pound container or container equivalent is expected to result in an operating reserve of $350,000, which is less than the committee generally recommends, but considered adequate to meet the committee's financial needs in the early part of the 2003 season.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2002–03 season could range between $5.50 and $6.00 per 25-pound container or container equivalent

of nectarines. Therefore, the estimated assessment revenue for the 2002–03 fiscal period as a percentage of total grower revenue could range between 3.17 and 3.45 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the committee's meeting was widely publicized throughout the California nectarine industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the May 1, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This assessment rate is lower than the assessment rate currently in effect; (2) the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) the 2002–03 fiscal period began on March 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable nectarines handled during such fiscal period; (4) handlers are aware of this action which was unanimously recommended by the committee at public meetings and is similar to other assessment rate actions issued in past years; and (5) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 916

Nectarines, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 916 is amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 916 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 916.234 is revised to read as follows:

§ 916.234 Assessment rate.

On and after March 1, 2002, an assessment rate of $0.19 per 25-pound container or container equivalent of nectarines is established for California nectarines.

Dated: June 20, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–15962 Filed 6–24–02; 8:45 am]

BILLING CODE 3410–02–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB60

Profile Documents for Commodity Pools; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations that were published in the **Federal Register** of October 2, 2000 (65 FR 58648). The regulations related to accommodating National Futures Association's (''NFA'') Rule 2–35(d) regarding profile documents for commodity pools and establishing procedures for the use, amendment and filing of profile documents that are parallel to those applicable to disclosure documents.

DATES: Effective July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Eileen R. Chotiner, Futures Trading Specialist, (202) 418–5467, electronic mail: ''echotiner@cftc.gov,'' Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: Commission regulation 4.26(b), which was adopted in 1995,[1] required a commodity pool operator (''CPO'') to attach the most current account statement and annual report for the pool to the disclosure document used to solicit prospective participants. As an alternative to attaching the account statement, the COP was permitted to provide information concerning the performance of the pool that was current within 60 days of the date the disclosure document was distributed.

In July 2000, the Commission proposed changes to its rules to permit CPOs to use a summary or ''profile'' comment prior to delivery of the pool's disclosure document, in accordance with rules proposed by NFA.[2] The sole change the Commission proposed to Rule 4.26 was to extend to profile documents the provision requiring correction of a materially inaccurate or incomplete disclosure document. The Commission received only one comment letter on the proposed changes, which supported the amendments. The comment letter did not address the proposed change to Rule 4.26.

The commission adopted final rules that were essentially the same as those proposed.[3] Subsequent to publication of these rules, it has come to the Commission's attention that the revised text was inadvertently substituted for section 4.26(b) rather than 4.26(c). Today's amendment restores the text of 4.26(b), which requires that the most recent account statement and annual report be attached to commodity pool disclosure documents, and deletes the text of 4.26(c) that was intended to be replaced.

Section 553(b) of the Administrative Procedure Act (''APA''), 5 U.S.C. 553(b), generally requires that notice of proposed rulemaking be published in the Federal Register and that an opportunity for public comment be

[1] 46 FR 38146 at 38189 (July 25, 1995).

[2] 65 FR 46122 (July 27, 2000).

[3] 65 FR 58648 (October 2, 2000).

provided when an agency promulgates new rules. APA § 553(b)(B) provides an exception to this requirement ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Commission staff have been advised by National Futures Association, the designated self-regulatory association (''DSRO'') for CPOs, that despite the inadvertent amendment of Rule 4.26(b), CPOs have been following the rule as though the requirement for the most current account statement and annual report had not been eliminated. Thus, the Commission has determined that publication of this correction for comment is unnecessary because CPOs, the entities subject to the rule, have been operating as though the rule had been in effect.

Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611 (1994), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[4] The Commission previously has determined that registered CPOs are not small entities for the purpose of the RFA.[5] Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

This rule does not contain information collection requirements. Filing requirements regarding the disclosure document and information that must be distributed with it are included in section 4.21 and 4.22, which are part of an approved paperwork collection [OMB Control No. 3038–0005].

C. Cost-Benefit Analysis

Section 15 of the Commodity Exchange Act, as amended by section 119 of the CFMA, requires the Commission, before promulgating a new regulation under the Act, to consider the costs and benefits of the Commission's action. Section 15 further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The main area of concern relevant to this rulemaking is the first set forth in the Act, ''protection of market participants and the public.'' The other factors are inapplicable to this rule. The Commission concludes that the benefit to the public of receiving the financial information specified above outweighs the costs of providing the information.

List of Subjects in 17 CFR Part 4

Brokers, Commodity futures Commodity pool operators, Commodity trading advisors.

Accordingly, 17 CFR part 4 is corrected by making the following correcting amendments:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for Part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

2. Section 4.26 is amended by removing paragraph (c), redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

§ 4.26 Use, amendment and filing of Disclosure Document.

(a) * * *

(b) The commodity pool operator must attach to the Disclosure Document the most current Account Statement and Annual Report for the pool required to be distributed in accordance with § 4.22; provided, however, that in lieu of the most current Account Statement the commodity pool operator may provide performance information for the pool current as of a date not more than sixty days prior to the date on which the Disclosure Document is distributed and covering the period since the most recent performance information contained in the Disclosure Document.

* * * * *

Issued in Washington, DC on June 19, 2002 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–15994 Filed 6–24–02; 8:45 am]

BILLING CODE 6351–01–M

[4] 47 FR 18618–18621 (April 30, 1982).

[5] 47 FR 18619–18620.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 02—33]

RIN 1515–AD06

Passenger Name Record Information Required for Passengers on Flights in Foreign Air Transportation to or From the United States

AGENCY: Customs Service, Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends the Customs Regulations, on an interim basis, in order to implement a provision of the Aviation and Transportation Security Act which requires that air carriers make Passenger Name Record (PNR) information available to Customs upon request. The availability of PNR information to Customs is necessary for purposes of ensuring aviation safety and protecting national security.

Under the interim rule, each air carrier must provide Customs with electronic access to requested PNR information contained in the carrier's automated reservation system and/or departure control system that sets forth the identity and travel plans of any passenger(s) on flights in foreign air transportation either to or from the United States. In order to readily provide Customs with such access to requested PNR data, each air carrier must ensure that its electronic reservation/departure control systems correctly interface with the U.S. Customs Data Center, Customs Headquarters. Any air carrier which has not yet taken steps to properly interface its automated PNR database with the Customs Data Center must do so within 30 days from the date that Customs contacts the carrier and requests that the carrier effect such an interface. However, the Assistant Commissioner, Office of Field Operations (OFO), may allow an air carrier an additional extension of this period for good cause shown.

DATES: Interim rule is effective June 25, 2002. Comments must be received on or before August 26, 2002.

ADDRESSES: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW., Washington, DC during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Liliana Quintero, Office of Field Operations, 202–927–2531.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 2001, the President signed into law the Aviation and Transportation Security Act (Act), Public Law 107–71. Section 115 of that law amended 49 U.S.C. 44909, to add a new paragraph (c) in order to provide, in part, that, not later than 60 days after the date of enactment of the Act, each air carrier, foreign and domestic, operating a passenger flight in foreign air transportation to the United States must electronically transmit to Customs, in advance of the arrival of the flight, a related passenger manifest and a crew manifest containing certain required information pertaining to the passengers and crew on the flight (49 U.S.C. 44909(c)(1), (c)(2) and (c)(4)). Furthermore, pursuant to 49 U.S.C. 44909(c)(3), these carriers are also required to make Passenger Name Record information available to Customs upon request. The availability of PNR information to Customs is necessary for purposes of ensuring aviation safety and protecting national security.

By a document published in the **Federal Register** (66 FR 67482) on December 31, 2001, as T.D. 02–01, Customs issued an interim rule that added a new § 122.49a to the Customs Regulations (19 CFR 122.49a) in order to implement the requirement in 49 U.S.C. 44909(c)(1), (c)(2) and (c)(4) for the electronic presentation to Customs of a passenger manifest and a crew manifest in advance of the arrival of each passenger flight in foreign air transportation to the United States. In particular, § 122.49a requires air carriers, for each flight subject to the statute, to transmit to Customs, by means of an electronic data interchange system approved by Customs, a passenger manifest and, by way of a separate transmission using the same system, a crew manifest.

In T.D. 02–01, (66 FR at 67483), Customs stated that the requirement in 49 U.S.C. 44909(c)(3) that air carriers make Passenger Name Record information available to Customs upon request would be the subject of a separate document published in the **Federal Register**.

Accordingly, Customs is now issuing an interim rule that adds a new § 122.49b to the Customs Regulations (19 CFR 122.49b) in order to implement 49 U.S.C. 44909(c)(3).

Unlike 49 U.S.C. 44909(c)(1), (c)(2) and (c)(4), where the requirement that air carriers transmit passenger and crew manifests to Customs is expressly limited to those passenger flights in foreign air transportation that are destined for the United States, section 44909(c)(3) has no such limitation in requiring air carriers to make Passenger Name Record (PNR) information available to Customs upon request. Rather, if an air carrier, foreign or domestic, is engaged in foreign air transportation to the United States, section 44909(c)(3) authorizes Customs to request access to PNR information. Accordingly, this section applies to PNR information for inbound or outbound flights in foreign air transportation.

Thus, under § 122.49b, each air carrier must, upon request, provide Customs with electronic access to Passenger Name Record information that is contained in the carrier's automated reservation/departure control systems in connection with passenger flights in foreign air transportation either to or from the United States, including flights to the United States where the passengers have already been pre-inspected or pre-cleared at the foreign location for admission to the U.S. In order to readily provide Customs with such access to requested PNR data, each air carrier must ensure that its electronic reservation/departure control systems correctly interface with the U.S. Customs Data Center, Customs Headquarters.

Passenger Name Record (PNR) Information Defined

Passenger Name Record information that air carriers would need to make available to Customs upon request under section 44909(c)(3) and § 122.49b refers to reservation information contained in an air carrier's electronic reservation system and/or departure control system that sets forth the identity and travel plans of each passenger or group of passengers included under the same reservation record number with respect to any passenger flight in foreign air transportation to or from the United States.

PNR Data Elements That Customs May Request

The air carrier, upon request, must electronically provide Customs with access to any and all PNR data elements concerning the identity and travel plans of a passenger for any flight in foreign air transportation to or from the United States, to the extent that the carrier in fact possesses the requested data elements in its reservation system and/or departure control system. The following list of PNR data elements is intended merely to be illustrative of those data elements to which Customs may request access in relation to a passenger:

(1) Last name; first name; date of birth; address(es); and phone number(s);

(2) Passenger name record locator (reservation) number;

(3) Reservation date (or dates, if multiple reservations made), or if no advance reservation made (''go show'');

(4) Travel agency/agent, if applicable;

(5) Ticket information;

(6) Form of payment for ticket;

(7) Itinerary information;

(8) Carrier information for the flight, including but not limited to: carrier information for each segment of the flight if not continuous; the flight number(s); and date(s) of intended travel;

(9) Seating; and

(10) PNR history.

It is emphasized that there is no requirement that an air carrier collect any other Passenger Name Record information than the particular PNR data that the carrier already collects on its own and maintains in its electronic reservation/departure control systems. Generally speaking, the PNR information contained in an air carrier's automated PNR database may consist of as few as 5 data elements or in excess of 50 data elements, depending upon the particular record and carrier.

Carriers' Electronic Systems Must Correctly Interface With the Customs Data Center To Provide Customs With Access to Requested PNR Data

As previously indicated, in furnishing Customs with electronic access to requested Passenger Name Record data, the air carrier's electronic reservation/departure control systems must correctly interface with the U.S. Customs Data Center, Customs Headquarters. To fully and effectively accomplish this interface between the air carrier's electronic reservation/departure control systems and the

Customs Data Center, the carrier must do the following:

(1) Provide Customs with an electronic connection to its reservation system and/or departure control system. (This connection can be provided directly to the Customs Data Center, Customs Headquarters, or through a third party vendor that has such a connection to Customs.);

(2) Provide the Customs Data Center with the necessary airline reservation/departure control systems' commands that will enable Customs to:

(a) Connect to the carrier's reservation/departure control systems;

(b) Obtain the carrier's schedules of flights;

(c) Obtain the carrier's passenger flight lists; and

(d) Obtain data for all passengers listed for a specific flight; and

(3) Provide technical assistance to Customs as required for the continued full and effective interface of the carrier's electronic reservation/departure control systems with the Customs Data Center, in order to ensure the proper response from the carrier's systems to requests for data that are made by Customs.

Customs is aware that a number of air carriers have not yet taken steps to properly connect their automated reservation/departure control systems with the Customs Data Center. Consequently, any air carrier that has not yet done so must fully and effectively interface its automated PNR database with the Customs Data Center, as described, within 30 days from the date that Customs contacts the carrier and requests that the carrier effect such an interface. However, an air carrier may apply in writing to the Assistant Commissioner, Office of Field Operations (OFO), for an additional extension of the period in which to properly interface its electronic reservation/departure control systems with the Customs Data Center. Following receipt of the application, the Assistant Commissioner, OFO, may, in writing, allow the carrier an extension of this period for good cause shown. The Assistant Commissioner's decision as to whether and/or to what extent to grant such an extension is final.

Sharing of PNR Information With Other Federal Agencies

Passenger Name Record information under 49 U.S.C. 44909(c)(3) that is made available to Customs electronically may, upon request, be shared with other Federal agencies for the purpose of protecting national security (49 U.S.C. 44909(c)(5)) or as otherwise authorized by law.

Technical Amendment of § 122.49a(c)(2)

Under § 122.49a(c)(2), Customs Regulations (19 CFR 122.49a(c)(2)), in pertinent part, each air carrier must electronically transmit to Customs the United States visa number for each applicable passenger and crew member on a passenger flight covered by § 122.49a(a). Under § 122.49a(c)(3), this information is to be obtained by electronically transmitting to Customs the U.S. non-immigrant visa travel document. This transmission is in fact accomplished through the use of an electronic machine reader that scans the travel document and transmits the information on it to Customs.

However, it has been determined that the visa number is not located in the machine-readable zone of the U.S.-issued non-immigrant visa travel document, and thus the visa number on this document cannot be transmitted to Customs with the use of a machine reader. By contrast, the travel document number for the U.S.-issued visa is located in the machine-readable zone of that document, and, as such, this number can be transmitted to Customs under the existing system.

Hence, § 122.49a(c)(2) is changed by deleting the requirement for the U.S. visa number, and instead requiring that the carrier electronically transmit to Customs the travel document number for the U.S.-issued visa, that is located in the machine-readable zone of that document.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), at the U.S. Customs Service, 799 9th Street, NW., Washington, DC during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Administrative Procedure Act, Executive Order 12866 and the Regulatory Flexibility Act

This interim regulation has been determined to be urgently needed for purposes of ensuring aviation safety and protecting national security. For these reasons, Customs finds that good cause exists for dispensing with the notice and public comment procedures of the Administrative Procedure Act (5 U.S.C. 553) as being contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Because this document is not subject to the requirements of 5 U.S.C. 553, as noted, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor does this interim regulation result in a ''significant regulatory action'' under E.O. 12866.

List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Customs duties and inspection, Entry procedure, Reporting and recordkeeping requirements, Security measures.

Amendments to the Regulations

Part 122, Customs Regulations (19 CFR part 122), is amended as set forth below.

PART 122—AIR COMMERCE REGULATIONS

1. The general authority citation for part 122 and the specific sectional authority citation for § 122.49a continue to read, and a new specific sectional authority citation is added to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

§ 122.49a also issued under 19 U.S.C. 1431 and 49 U.S.C. 44909(c).

§ 122.49b also issued under 49 U.S.C. 44909(c)(3).

§ 122.49a [Amended]

2. In § 122.49a(c)(2), remove the words ''and the United States visa number'' and add, in their place, the words ''and the United States visa travel document number (located in the machine-readable zone of the visa document)''.

3. Subpart E of part 122 is amended by adding a new § 122.49b to read as follows:

§ 122.49b Passenger Name Record (PNR) information.

(a) *General requirement.* Each air carrier, foreign and domestic, operating a passenger flight in foreign air transportation to or from the United States, including flights to the United States where the passengers have already been pre-inspected or pre-cleared at the foreign location for admission to the U.S., must, upon

request, provide Customs with electronic access to certain Passenger Name Record (PNR) information, as defined and described in paragraph (b) of this section. In order to readily provide Customs with such access to requested PNR information, each air carrier must ensure that its electronic reservation/departure control systems correctly interface with the U.S. Customs Data Center, Customs Headquarters, as prescribed in paragraph (c)(1) of this section.

(b) *PNR information defined; PNR information that Customs may request.*

(1) *PNR information defined.* Passenger Name Record (PNR) information refers to reservation information contained in an air carrier's electronic reservation system and/or departure control system that sets forth the identity and travel plans of each passenger or group of passengers included under the same reservation record with respect to any flight covered by paragraph (a) of this section.

(2) *PNR data that Customs may request.* The air carrier, upon request, must provide Customs with electronic access to any and all PNR data elements relating to the identity and travel plans of a passenger concerning any flight under paragraph (a) of this section, to the extent that the carrier in fact possesses the requested data elements in its reservation system and/or departure control system. There is no requirement that the carrier collect any PNR information under this paragraph, that the carrier does not otherwise collect on its own and maintain in its electronic reservation/departure control systems.

(c) *Required carrier system interface with Customs Data Center to facilitate Customs retrieval of requested PNR data.* (1) *Carrier requirements for interface with Customs.* Within the time specified in paragraph (c)(2) of this section, each air carrier must fully and effectively interface its electronic reservation/departure control systems with the U.S. Customs Data Center, Customs Headquarters, in order to facilitate Customs ability to retrieve needed Passenger Name Record data from these electronic systems. To effect this interface between the air carrier's electronic reservation/departure control systems and the Customs Data Center, the carrier must:

(i) Provide Customs with an electronic connection to its reservation system and/or departure control system. (This connection can be provided directly to the Customs Data Center, Customs Headquarters, or through a third party vendor that has such a connection to Customs.);

(ii) Provide Customs with the necessary airline reservation/departure control systems' commands that will enable Customs to:

(A) Connect to the carrier's reservation/departure control systems;

(B) Obtain the carrier's schedules of flights;

(C) Obtain the carrier's passenger flight lists; and

(D) Obtain data for all passengers listed for a specific flight; and

(iii) Provide technical assistance to Customs as required for the continued full and effective interface of the carrier's electronic reservation/departure control systems with the Customs Data Center, in order to ensure the proper response from the carrier's systems to requests for data that are made by Customs.

(2) *Time within which carrier must interface with Customs Data Center to facilitate Customs access to requested PNR data.* Any air carrier which has not taken steps to fully and effectively interface its electronic reservation/departure control systems with the Customs Data Center must do so, as prescribed in paragraphs (c)(1)(i)–(c)(1)(iii) of this section, within 30 days from the date that Customs contacts the carrier and requests that the carrier effect such an interface. After being contacted by Customs, if an air carrier determines it needs more than 30 days to properly interface its automated database with the Customs Data Center, it may apply in writing to the Assistant Commissioner, Office of Field Operations (OFO) for an extension. Following receipt of the application, the Assistant Commissioner, OFO, may, in writing, allow the carrier an extension of this period for good cause shown. The Assistant Commissioner's decision as to whether and/or to what extent to grant such an extension is within the sole discretion of the Assistant Commissioner and is final.

(d) *Sharing of PNR information with other Federal agencies.* Passenger Name Record information as described in paragraph (b)(2) of this section that is made available to Customs electronically may, upon request, be shared with other Federal agencies for the purpose of protecting national security (49 U.S.C. 44909(c)(5)). Customs may also share such data as otherwise authorized by law.

Robert C. Bonner,

Commissioner of Customs.

Approved: June 19, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–15935 Filed 6–24–02; 8:45 am]

BILLING CODE 4820–02–P

RAILROAD RETIREMENT BOARD

20 CFR Part 217

RIN 3220–AB46

Application for Annuity or Lump Sum

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to permit a spouse application, when filed simultaneously with the employee's application for a disability annuity, to be filed more than three months in advance of the earliest annuity beginning date. These changes bring §§ 217.9 and 217.30 into agreement with the distinction already found in § 218.7.

DATES: Effective June 25, 2002.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 217.9 of the regulations of the Board provides for the effective period of an application. This rule amends § 217.9(b) to permit a spouse application, when filed simultaneously with the employee's application for a disability annuity, to be filed more than three months in advance of the earliest annuity beginning date. This rule also makes a conforming amendment to § 217.30 concerning the reasons for denial of an application, and provides greater clarity for such denials.

The Board published the proposed rule on November 29, 2001 (66 FR 59548), and invited comments by January 28, 2002. No comments were received. Accordingly, the proposed rule has been redrafted as a final rule without change.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866. Therefore, no regulatory analysis is required. Information collections associated with § 217.9 have been approved by the Office of Management and Budget under control number 3220–0002.

List of Subjects in 20 CFR Part 217

Claims, Railroad retirement, Reporting and record keeping requirements.

For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, chapter II, part 217 of the Code of Federal Regulations as follows:

PART 217—APPLICATION FOR ANNUITY OR LUMP SUM

1. The authority citation for part 217 continues to read as follows:

Authority: 45 U.S.C. 231d and 45 U.S.C. 231f.

2. Section 217.9, paragraph (b)(1), is amended by adding directly after the words ''paragraph (b)(2)'', the words ''and paragraph (b)(3)'', and by adding a new paragraph (b)(3) to read as follows:

§ 217.9 Effective period of application.

* * * * *

(b) * * *

(3) *Application for spouse annuity filed simultaneously with employee disability annuity application.* When the qualifying employee's annuity application effective period is determined by the preceding paragraph (b)(2) of this section, a spouse who meets all eligibility requirements may file an annuity application on the same date as the employee claimant. The spouse application will be treated as though it were filed on the later of the actual filing date or the employee's annuity beginning date.

* * * * *

3. Section 217.30 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and by adding a new paragraph (c) to read as follows:

§ 217.30 Reasons for denial of application.

* * * * *

(c) The applicant files an application more than three months before the date on which the eligible person's benefit can begin except if the application is for an employee disability annuity or for a spouse annuity filed simultaneously with the employee's disability annuity application.

Dated: June 18, 2002.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02–15911 Filed 6–24–02; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 89F–0452]

Secondary Direct Food Additives Permitted for Direct Addition to Food for Human Consumption; Materials Used as Fixing Agents in the Immobilization of Enzyme Preparations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of dimethylamine-epichlorohydrin and acrylamide-acrylic acid resins, individually or together, as fixing agents for the immobilization of glucose isomerase enzyme preparations. This action is in response to a petition filed by Enzyme Bio-Systems Ltd.

DATES: This rule is effective June 25, 2002. Submit written objections and requests for a hearing by July 25, 2002.

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

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3107.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of November 17, 1989 (54 FR 47828), FDA announced that a food additive petition (FAP 9A4175) had been filed by Enzyme Bio-Systems Ltd., International Plaza, Route 9W, Englewood Cliffs, NJ 07632. The petition proposed to amend the food additive regulations to provide for the safe use of dimethylamine-epichlorohydrin copolymer (DEC) and acrylamide-acrylic acid resin (AAR) as fixing agents for immobilizing glucose isomerase enzyme.

DEC and AAR will be used, individually or together, to immobilize glucose isomerase enzymes for the purpose of converting glucose to a mixture of glucose and fructose for the production of high fructose corn syrup (HFCS). The glucose isomerase immobilized with the petitioned polymers may be used as a substitute for one or more of the immobilized glucose isomerases currently in use.

In its evaluation of the safety of the petitioned substances, FDA has reviewed the safety of the additives and the chemical impurities that may be present in them resulting from the manufacturing processes. Although the petitioned polymers have not been shown to cause cancer, they may contain minute amounts of carcinogenic impurities resulting from their manufacture. DEC may contain traces of unreacted epichlorohydrin and its degradation product, 1,3-dichloro-2-propanol. AAR may contain minute amounts of the unreacted monomer, acrylamide. These chemical impurities have been shown to cause cancer in test animals. Residual amounts of reactants and their impurities commonly are found as contaminants of chemical products, including food additives.

II. Determination of Safety

Under the general safety standard of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as a ''reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is evaluated properly under the general safety standard using risk assessment procedures to determine whether there is reasonable certainty that no harm will result from the intended use of the additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

III. Safety of the Petitioned Use of the Additives

FDA has estimated that the petitioned use of the additives, DEC and AAR, will result in a daily intake of 210 micrograms per person per day (µg/p/d) and 83 µg/p/d, respectively (Ref. 1).

FDA has evaluated the safety of DEC and AAR under the general safety

standard and concludes that the estimated dietary exposure to the additives resulting from the petitioned uses is safe. In reaching this conclusion, FDA reviewed all available toxicological data and used risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by the carcinogenic impurities that may be present in the petitioned additives. The chemical impurities considered are acrylamide in AAR and epichlorohydrin and 1,3-dichloro-2-propanol in DEC.

The risk evaluation of the carcinogenic impurities has two aspects: (1) Assessment of exposure to the impurities from the petitioned use of the additives; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of exposure to humans.

A. Acrylamide

FDA has estimated the upper-bound exposure to acrylamide from the petitioned use of AAR to be 2 nanograms per person per day (ng/p/d), corresponding to a dietary concentration of 0.67 part-per-trillion (pptr) in the daily diet (3 kg) (Ref. 2). This estimate is conservative, as it does not account for the removal of impurities, including acrylamide, from the crude HFCS during the purification process.

1. Acrylamide as a Neurotoxin

Acrylamide is a recognized neurotoxin. To derive the safe exposure level to acrylamide as a neurotoxin, the agency used a study by J. D. Burek et al. (Ref. 3). FDA, using an uncertainty factor of 1,000 (equivalent to a safety factor), determined the acceptable daily intake of acrylamide with respect to neurotoxicity to be 12 µg/p/d based on the neurotoxicity evaluation and absence of a neurotoxic effect (Refs. 4 and 5). Therefore, based on the agency's estimate that the exposure to acrylamide will not exceed 2 ng/p/d, FDA concludes that the exposure to acrylamide from the petitioned use of AAR does not pose a neurotoxic risk.

2. Acrylamide as a Carcinogen

To estimate the upper-bound limit of lifetime human risk from exposure to acrylamide as a carcinogen resulting from the petitioned use of AAR, the agency used published data from a long-term rat bioassay on acrylamide, conducted by Johnson et al., in addition to unpublished data from this bioassay in the agency's files (Refs. 6 and 7). The authors of this bioassay reported that acrylamide administered to rats via drinking water is associated with statistically significant increased incidences of thyroid follicular adenomas and testicular mesotheliomas in male rats, and of mammary tumors (adenomas or adenocarcinomas, fibromas or fibroadenomas, adenocarcinomas alone), central nervous system tumors (brain astrocytomas, brain or spinal cord glial tumors), and uterine tumors (adenocarcinomas) in female rats.

Based on the agency's estimate that exposure to acrylamide will not exceed 2 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from exposure to acrylamide from the petitioned use of the subject additive is 2.2×10^{-8} or 22 in 1 billion (Ref. 8). Considering that this estimated upper-bound risk is based on very conservative assumptions, the agency believes that the probable lifetime human risk would be significantly less than the estimated upper-bound limit of lifetime human risk. Therefore, the agency concludes that there is reasonable certainty that no harm from exposure to acrylamide would result from the petitioned use of AAR.

B. Epichlorohydrin

FDA has estimated the exposure to epichlorohydrin from the petitioned use of DEC to be 2.1 ng/p/d or 0.7 pptr of the daily diet (Refs. 1 and 9). This estimate is conservative, as it does not account for the removal of residual impurities, including epichlorohydrin, during the processing of the crude HFCS.

The agency used data from a carcinogenesis bioassay conducted by Konishi et al. (Ref. 10), on rats fed epichlorohydrin via their drinking water, to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of DEC. The authors reported that the test material caused significantly increased incidence of stomach papillomas and carcinomas in rats.

Based on the agency's estimate that exposure to epichlorohydrin will not exceed 2.1 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from exposure to epichlorohydrin resulting from the petitioned use of the subject additive is 9.5×10^{-11} or 95 in 1 trillion (Ref. 8). Considering that this upper-bound estimated risk is based on very conservative assumptions, the agency believes that the probable lifetime human risk would be significantly less than the estimated upper-bound limit of lifetime human risk. Therefore, FDA concludes that there is reasonable certainty that no harm from exposure to epichlorohydrin would result from the petitioned use of DEC.

C. 1,3-Dichloro-2-propanol (DCP)

DCP is the product of epichlorohydrin degradation in water. The current regulation for the use of DEC resin establishes a residual limit for DCP at 1,000 ppm in the DEC resin (21 CFR 173.60 (b)(3)). The agency has estimated that exposure to DCP from the petitioned use for DEC will not exceed 210 ng/p/d (Refs. 1 and 9). This estimate is conservative, as it does not account for the removal of residual impurities, including DCP, during the processing of the crude HFCS.

The agency used data from a 1986 drinking water bioassay in rats (Ref. 11) to estimate the worst case upper-bound lifetime cancer risk from exposure to DCP from the petitioned use of DEC. This risk was calculated as 1.2×10^{-7} or 12 in 100 million (Refs. 12 and 13). Considering that this upper-bound estimated risk is based on very conservative assumptions, the agency believes that the probable lifetime human risk would be significantly less than the upper-bound limit of lifetime human risk. Therefore, FDA concludes that there is reasonable certainty that no harm from exposure to DCP would result from the petitioned use of DEC.

D. Need for Specifications

The agency also has considered whether specifications are necessary to control the amount of acrylamide present as an impurity in AAR and epichlorohydrin and DCP in DEC. The agency finds that specifications are not necessary for the following reasons:

1. The agency would not expect these impurities to become components of food at other than extremely low levels because of the low levels at which acrylamide, epichlorohydrin, and DCP may be expected to remain as impurities following production and purification of the additives and HFCS, and

2. The upper-bound limits of lifetime human risk from exposure to acrylamide, epichlorohydrin, and DCP are very low, 2.2×10^{-8}, 9.5×10^{-11}, and 1.2×10^{-7} respectively.

IV. Conclusions

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additives as fixing agents in the immobilization of glucose isomerase enzyme preparations is safe, (2) that the additives will achieve their intended technical effect, and therefore, (3) the regulations in § 173.357 (21 CFR 173.357) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the

documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

The agency has determined under 21 CFR 25.32(j) that this action is of a type that individually or cumulatively does not have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (see **ADDRESSES**) written objections by July 25, 2002. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated November 22, 1989, from the Food and Color Additives Review Section to the Direct Additives Branch, ''FAP 9A4175: Enzyme Bio-Systems Ltd. Dimethylamine-Epichlorohydrin Resin (DEC) and Acrylic Acid-Acrylamide Resin (AAR) as Fixing Agents for Glucose Isomerase Immobilized Enzyme Preparations. Submission of 9–25–89.''

2. Memorandum dated August 17, 1998, from the Division of Product Policy, Scientific Support Branch, Chemistry and Environmental Review Team (CERT) to the Division of Petition Control, ''FAP 9A4175 (MATS# 438)—Enzyme Bio-Systems Ltd. Exposure to Acrylamide Monomer from the Use of Acrylic Acid-Acrylamide Resin (AAR) as a Fixing Agent for Glucose Isomerase Immobilized Enzyme Preparations. Division of Petition Control (DPC, HFS–215) Verbal Request dated 8–4–98.''

3. Burek, J. D., R. R. Albee, J. E. Beyer, et al., ''Subchronic Toxicity of Acrylamide Administered to Rats In the Drinking Water Followed by Up to 144 Days of Recovery,'' *Journal of Environmental Pathology and Toxicology*, 4:157–182, 1980.

4. Memorandum dated September 9, 1997, from the Division of Health Effects Evaluation to the Division of Product Policy, ''Acrylamide, New Information and Re-evaluation of the Neurotoxicity Potential and Tentative ADI of Acrylamide as a Migrant.''

5. Memorandum dated January 24, 2000, from the Division of Health Effects Evaluation to the Division of Product Policy, ''Final Safety Evaluation of Acrylamide-Acrylic Acid Resin (AAR) and Dimethylamine-epichlorohydrin Resin (DEC) as Fixing Agents for Immobilized Glucose Isomerase Used in Foods. Memo of Div. of Product Manufacture and Use, Chemistry and Environmental Review Team (CERT) 4/28/99, Received 5/5/99. QRAC Concurrence of Estimation of the Upper Bound Lifetime Risk from Residual Epichlorohydrin and Acrylamide (S. Henry Memo Dated Dec. 20, 1999).''

6. Johnson, K. A., S. J. Gorzinski, K. M. Bodner, R. A. Campbell, C. H. Wolf, M. A. Friedman, and R.W. Mast, ''Chronic Toxicity and Oncogenicity Study on Acrylamide Incorporated in the Drinking Water of Fischer 344 Rats,'' *Toxicology and Applied Pharmacology*, 85:154–168, 1986.

7. Memorandum of Conference, FDA, CFSAN, Washington, DC Cancer Assessment Committee Meeting on Acrylamide, February 13 and June 6, 1985, and May 31, 1996.

8. Memorandum dated May 7, 1999, from the Regulatory Policy Branch to the Quantitative Risk Assessment Committee, ''Estimation of the Upper-Bound Lifetime Risk from Residual Epichlorohydrin and Acrylamide Monomers in Dimethylamine-Epichlorohydrin and Acrylic Acid-Acrylamide Resins, Respectively, for Use as Fixing Agents in Immobilizing Glucose Isomerase Enzyme Preparation: Use Requested in Food Additive Petition No. 9A4175 from Enzymes Bio-Systems Ltd.''

9. Memorandum dated August 7, 1997, from the Division of Product Policy to Division of Petition Control, ''FAPs 9A4175, 3B3677, 6B3940, 3B3696, 9B4131, 9B4132 and 9B4133. DPC Request to Identify and Address Unresolved Issues in the Pending Acrylamide Petitions.''

10. Konishi, Y. et al., ''Forestomach Tumors Induced by Orally Administered Epichlorohydrin in Male Wistar Rats,'' *Gann*, 71:922–923, 1980.

11. Research and Consulting Co., AG, Project 017820, Report Parts 1–4, February 24, 1986: 104-Week Chronic Toxicity and Carcinogenicity Study with 1,3-Dichloropropan-2-ol in the Rats; Food Master File 000543, Vol. 11.

12. Memorandum dated August 24, 1998, from the Executive Secretary, Cancer Assessment Committee, to the Chairman, Cancer Assessment Committee, ''FAP 9A4175: Worst-Case Cancer Risk Assessment for 1,3-dichloropropanol (DCP).''

13. Memorandum dated March 25, 1999, from Division of Health Effects Evaluation to the Executive Secretary, Cancer Assessment Committee, ''Expedited Risk Assessment for 1,3-dichloropropanol Memo of August 24, 1998. Accepting Risk Estimate for Regulation of FAP 9A4175.''

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 173.357 is amended in the table in paragraph (a)(2) by alphabetically adding entries for ''Acrylamide-acrylic acid resin'' and ''Dimethylamine-epichlorohydrin resin'' to read as follows:

§ 173.357 Materials used as fixing agents in the immobilization of enzyme preparations.

* * * * *

(a) * * *

(2) * * *

Substances	Limitations
Acrylamide-acrylic acid resin: Complying with § 173.5(a)(1) and (b) of this chapter.	May be used as a fixing material in the immobilization of glucose isomerase enzyme preparations for use in the manufacture of high fructose corn syrup, in accordance with § 184.1372 of this chapter.

Substances	Limitations
* * * * *	
Dimethylamine-epichlorohydrin resin: Complying with § 173.60(a) and (b) of this chapter.	May be used as a fixing material in the immobilization of glucose isomerase enzyme preparations for use in the manufacture of high fructose corn syrup, in accordance with § 184.1372 of this chapter.
* * * * *	

* * * * *

Dated: June 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–15901 Filed 6–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name and address for Akey, Inc.

DATES: This rule is effective June 25, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–101), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Akey, Inc., P.O. Box 607, Lewisburg, OH 45338, has informed FDA of a change of name and address to North American Nutrition Companies, Inc., C.S. 5002, 6531 St., Rt. 503, Lewisburg, OH 45338. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect the change.

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

List of Subjects in 21 CFR Part 510

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

Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for ''Akey, Inc.'' and by alphabetically adding a new entry for ''North American Nutrition Companies, Inc.'', and in the table in paragraph (c)(2) by revising the entry for ''017790'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
North American Nutrition Companies, Inc., C.S. 5002, 6531 St., Rt. 503, Lewisburg, OH 45338	017790
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
017790	North American Nutrition Companies, Inc., C.S. 5002, 6531 St., Rt. 503, Lewisburg, OH 45338
* * * * * * *	

Dated: May 24, 2002.

Andrew J. Beaulieu,

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

[FR Doc. 02–15900 Filed 6–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA28

TRICARE; Revisions to Coverage Criteria for Transplants, Cardiac and Pulmonary Rehabilitation and Ambulance Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements a number of regulatory revisions relating to TRICARE coverage for transplants and related services, cardiac and pulmonary rehabilitation and ambulance services. The revisions are clarification of TRICARE coverage and time limitations on preauthorizations for solid organ and stem cell transplantation for beneficiaries whose conditions are considered appropriate

for transplantation according to guidelines adopted by the Executive Director, Tricare Management Activity (TMA), or a designee; clarification of TRICARE coverage for ambulance service for organ and stem cell transplant candidates; recognition of certain transplant centers as authorized TRICARE institutional providers according to provisions adopted by the Executive Director, TMA, or a designee; clarification of pediatric consortium programs for organ transplantation according to provisions adopted by the Executive Director, TMA, or a designee; extension of coverage for cardiac rehabilitation for those patients who have had heart valve surgery, heart or heart-lung transplantation; establishment of coverage for pulmonary rehabilitation for beneficiaries whose conditions are considered appropriate for pulmonary rehabilitation according to guidelines adopted by the Executive Director, TMA, or a designee; and elimination of payment restrictions for MTF ordered ambulance transfers.

DATES: This final rule is effective July 25, 2002, except 199.4 (e)(18)(i)(F) and (e)(18)(i)(G) are effective December 1, 1991.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Marty Maxey, Medical Benefits and Reimbursement Systems, telephone (303) 676–3627.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

In the **Federal Register** of March 17, 1995 (60 FR 14403), the Office of the Secretary of Defense published for public comment a proposed rule regarding a number of changes relating to organ transplants. We received comments from government agencies that by law CHAMPUS is required to consult with during the rule making process. Following is a summary of the changes included in the proposed rule, an analysis of the comments received and provisions of the final rule.

II. Provisions of the Rule

A. Proposed Changes to Organ Transplantation

1. Coverage for Heart-Lung, Single or Double Lung, and Combined Liver-Kidney Transplantation

Provisions of the Proposed Rule. The proposed rule established coverage for heart-lung, single or double lung and combined liver-kidney transplantation. Section 199.4, paragraph (e)(5) of 32 CFR allows Basic Program benefits to be extended for otherwise covered services or supplies in connection with an organ transplant procedure, provided such transplant procedure generally is in accordance with accepted professional medical standards and is not considered to be experimental or investigational. Based on recommendations from the National Heart Lung and Blood Institute (NHLBI) on heart-lung, single and double lung transplantation and technology assessments from the Agency for Health Care Policy and Research (AHCPR) on heart-lung, single and double lung transplantation and combined liver-kidney transplantation, TRICARE determined it could no longer deny coverage for these transplant procedures as investigational since safety, efficacy and superiority to conventional treatments had been established.

Analysis of Major Public Comments. Several commentors brought to our attention that we incorrectly stated HCFA, renamed the Centers for Medicare and Medicaid Services (CMS), requested the Agency for Health Care Policy and Research (AHCPR) to perform assessments on lung and heart-lung transplantation when it was the Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), renamed TRICARE Management Activity, who initiated the requests.

Response: It is hereby noted the commentor's statements are correct.

In the preamble of the proposed rule, we stated the findings of the AHCPR assessment indicated that combined liver-kidney transplantation is an effective intervention in improving survival in patients with end-stage renal and hepatic disease. A commentor from AHCPR indicated the language should be changed to read: ''The findings of the AHCPR assessment indicated that the combined liver-kidney transplantation may be an effective intervention in improving survival in patients with end-stage renal and hepatic disease, but also discussed that factors related to patient selection and institutional criteria must be considered.''

Response: Although the preamble language of the proposed rule is not included in the final rule, we concur with the comment and note it accordingly.

One commentor felt the proposed rule language regarding liver transplantation coverage for primary liver tumors should be more explicit.

Response: As stated below in the Provisions of the Final Rule, all covered transplant procedures and the patient selection criteria has more appropriately been placed in the TRICARE/CHAMPUS Policy Manual. The information in the TRICARE/CHAMPUS Policy Manual is more explicit than that contained in 32 CFR part 199. The TRICARE/CHAMPUS Policy Manual can be accessed through TRICARE's Web site at *www.tricare.osd.mil.*

A commentor suggested we ask CMS, formerly HCFA, to describe its method of calculating and charging acquisition costs for kidneys because the proposed rule incorrectly states that all kidney recipients pay the ''same standard'' costs.

Response: We contacted CMS, formerly HCFA, and were advised the information regarding kidney acquisition costs is correct. The proposed regulatory language did state standard acquisition costs for live donors is different than that of cadavers.

A commentor believed the transportation cost of a living donor should be considered a TRICARE benefit.

Response: Transportation except by ambulance is specifically excluded under paragraph 199.4(g)(67).

One commentor questioned whether the effective date of July 1, 1983, for liver transplantation is correct.

Response: The July 1, 1983, date is correct.

Another commentor asked whether denying coverage for liver transplantation for those patients with ''active alcohol and other substance abuse'' preclude paying for a liver transplantation for someone with alcoholic cirrhosis? The same question was applied to combined liver-kidney transplantation.

Response: Coverage may be allowed if the patient has documented abstinence prior to transplantation and there is no evidence of other major organ debility. In addition, there must be evidence of ongoing participation in a social support group such as Alcoholics Anonymous; and evidence of a supportive family/social environment. These criteria are detailed in the TRICARE/CHAMPUS Policy Manual and can be accessed through TRICARE's Web site at www.tricare.osd.mil.

Several commentors suggested changing the phrase ''medically necessary and generally accepted practice . . .'' to terms such as ''medically necessary because it represents generally accepted practice . . .'' or ''reasonable and necessary.'' It was also suggested the term ''non-investigational,'' was confusing and should not be used.

Response: The phrase ''medically necessary and generally accepted practice . . .'' has been changed to read ''. . . medically necessary for the treatment of the condition for which it is administered, according to accepted standards of medical practice.'' The term ''non-investigational'' has been removed.

Provisions of the Final Rule. When the CHAMPUS final rules on Liver and Heart Transplants were published in 1986, the science of solid organ transplants was relatively new, therefore, detailed guidelines for these transplants were published in paragraph 199.4 (e)(5). The purpose of the Code of Federal Regulations is to provide broad guidelines and policies; the publishing of detailed guidelines in paragraphs 199.4 (e)(5)(v) and (e)(5)(vi) for liver and heart transplants has proved difficult to maintain. For example, one of the contraindications listed in paragraph 199.4 (e)(5)(v)(B) for liver transplants is viral-induced liver disease when viremia is still present. Recent studies show liver transplants for patients with end-stage liver failure resulting from hepatitis B and C is safe, effective and comparable to standard treatment.

Many transplant procedures are no longer considered unproven and are covered under TRICARE. To assist our beneficiaries in obtaining coverage for new transplant procedures in a timely manner, detailed policy and patient selection criteria for each covered transplant has more appropriately been placed in the TRICARE/CHAMPUS Policy Manual. The TRICARE/CHAMPUS Policy Manual contains operational policy necessary to efficiently implement 32 CFR part 199. The TRICARE/CHAMPUS Policy Manual augments 32 CFR part 199 and must be used in conjunction with the CFR for complete policy information. The TRICARE/CHAMPUS Policy Manual can be accessed through TRICARE's Web site at *www.tricare.osd.mil.*

Paragraph (e)(5) continues to allow Basic Program benefits to be extended for otherwise covered services or supplies in connection with an organ or stem cell transplant procedure, provided such transplant procedure generally is in accordance with accepted professional medical standards and is not considered unproven.

Since publication of the proposed rule, a final rule clarifying the exclusion of unproven drugs, devices and medical treatments and procedures was published in the **Federal Register** on January 6, 1997 (62 FR 625). The final rule adopted the use of the term ''unproven'' instead of investigational or experimental, therefore, we have replaced the terms investigational and experimental with the term unproven.

2. Time Limit on Preauthorization for Transplants

Provisions of the Proposed Rule: Wishing to protect beneficiaries and providers from significant financial risks as a result of noncovered care related to organ transplantation and to ensure the prudent expenditure of public funds, the proposed rule established preauthorization requirements for: (1) High dose chemotherapy and stem cell transplantation; (2) all initial and retransplanted solid organs, except kidney and cornea; and (3) advanced life support air ambulance and certified advanced life support attendant for lung or heart-lung candidates.

Analysis of Major Public Comments. One commentor expressed concern regarding the proposed preauthorization time requirement for organ transplants occur ''not fewer than two business days prior to the planned admission.''

Response: The reference to ''not fewer than two business days prior to the planned admission'' was removed prior to publication of the proposed rule in the **Federal Register**.

Provisions of the Final Rule: The paragraph on preauthorization requirements at Paragraph (e)(5)(ii) has been removed from the final rule, as preauthorization procedures are outlined in § 199.7 (f)(1)(ii) and § 199.15 (b)(4)(ii)(C).

3. Coverage of Cardiac Rehabilitation for Those Patients who have had Heart-Valve Surgery, Heart or Heart-Lung Transplantation

Provisions of the Proposed Rule. TRICARE coverage of cardiac rehabilitation for those patients who have had heart-valve surgery, heart or heart-lung transplantation is based on an assessment conducted by the AHCPR on ''Cardiac Rehabilitation Programs: Heart Transplant, Percutaneous Transluminal Coronary Angioplasty, and Heart Valve Surgery Patient'', establishing cardiac rehabilitation programs as safe and effective for these patients.

Analysis of Major Public Comments. One commentor suggested we make reference to AHCPR's assessment on cardiac rehabilitation programs if TMA, formerly OCHAMPUS, used the assessment in arriving at the decision to expand the cardiac rehabilitation benefit.

Response: It is hereby noted that TMA, formerly OCHAMPUS, did use the AHCPR's assessment in arriving at the decision to expand the cardiac rehabilitation benefit to include those patients who have had heart-valve surgery, heart or heart-lung transplantation.

Provisions of the Final Rule. The final rule is consistent with the proposed rule.

4. Recognizing Certain Transplant Centers as Authorized TRICARE Institutional Providers

Provisions of the Proposed Rule. The proposed rule outlined specific requirements for those institutional providers who wish to be certified as a TRICARE approved organ transplant center for heart-lung and single or double lung transplantation.

Analysis of Major Public Comments. One commentor questioned if there is a time period for which the liver transplant center should ''have at least a 70 percent one year actuarial survival rate . . .?'

Response: The transplant center should have a 70 percent actuarial survival rate based on the preceding 12-month period.

Provisions of the Final Rule: When the CHAMPUS final rules on Liver and Heart Transplants were published in 1986, there were not very many institutional providers performing these transplants, therefore, detailed procedures for qualifying as a CHAMPUS-approved heart or liver transplant center were published in 32 CFR, Section § 199.6 (b)(4)(ii) and (b)(4)(iii). As stated above, the purpose of the Code of Federal Regulations is to provide broad guidelines and policies; the publishing of detailed guidelines in § 199.6 (b)(4)(ii) and (b)(4)(iii) for heart and liver transplant centers has proved difficult to maintain. For example, the one year actuarial survival rate for liver transplants is currently over 70 percent, whereas § 199.6 (b)(4)(ii)(A)(*3*) states a liver transplant center must have at least a 50 percent one-year survival rate for ten cases. Publishing the required actuarial survival rates in the CFR does not allow the flexibility of easily updating the survival percentages as they improve, thus assuring our beneficiaries receive transplants at centers meeting the current actuarial survival rates. The certification requirements for transplant centers have more appropriately been placed in the TRICARE/CHAMPUS Policy Manual. The TRICARE/CHAMPUS Policy Manual contains operational policy necessary to efficiently implement the 32 CFR part 199. The TRICARE/CHAMPUS Policy Manual augments the 32 CFR part 199 and must be used in conjunction with the CFR for complete

policy information. The TRICARE/CHAMPUS Policy Manual can be accessed through TRICARE's Web site at *www.tricare.osd.mil.* § 199.6 (b)(4)(ii) provides broad policy guidelines for approving organ transplant centers.

5. Pediatric Consortium Program for Organ Transplantation

Provisions of the Proposed Rule: The proposed rule allows TRICARE to recognize pediatric facilities as authorized transplant centers when they belong to a pediatric consortium program whose combined experience and survival data meet the TRICARE criteria for qualifying as a certified TRICARE organ transplant center.

Analysis of Major Public Comment: Several commentors expressed concern about TRICARE's approach to consortium programs. One commentor asked us to explain the basis for differences between TRICARE and CMS, formerly HCFA, in our decision to certify as an authorized institutional provider those individual facilities that qualify only on the basis of combined experience and survival rates of a consortium. The commentor explained CMS, formerly HCFA, requires the individual facilities of a consortia meet these criteria separately.

Response: We failed to make clear in the language of the proposed rule that the consortium concept is being advocated on the part of pediatric transplantation centers. Our rationale for certifying individual pediatric facilities on the basis of combined experience and survival rates of a consortium is because pediatric facilities performing organ transplants are generally not able to meet TRICARE standards for certification as an authorized transplant center because of the number of transplants performed. Since TRICARE's beneficiary population is younger than Medicare's we needed to develop a process to recognize pediatric facilities as TRICARE authorized transplant centers.

Provisions of the Final Rule: As stated above, the certification requirements for transplant centers, including pediatric organ transplant centers have more appropriately been placed in the TRICARE/CHAMPUS Policy Manual. § 199.6 (b)(4)(iii) provides broad policy guidelines for approving individual pediatric organ transplant centers.

6. Exception to the Ambulance Benefit

Provisions of the Proposed Rule. The proposed rule allows an exception to the requirement that patients be transported to the closest appropriate facility when the patient is an organ transplantation candidate to be transported to a certified TRICARE organ transplant center.

Provisions of the Final Rule. Since publication of the proposed rule, military health care has undergone major reforms from a dual delivery system consisting of direct military treatment and civilian health care, to a fully integrated managed health care system; it is no longer appropriate to restrict coverage/payment of MTF ordered ambulance transfers. Based on this, the payment restrictions for MTF ordered ambulance transfers is being eliminated from the final rule language.

7. Coverage of Pulmonary Rehabilitation

Provisions of the Proposed Rule. The proposed rule extends coverage for pulmonary rehabilitation for beneficiaries whose conditions are considered appropriate according to guidelines adopted by the Executive Director, TMA, or a designee.

Provisions of the Final Rule. The final rule is consistent with the proposed rule.

8. Miscellaneous Provisions

Analysis of Major Comment: One commentor states CHAMPUS is not exempt from the Paperwork Reduction Act on the grounds that hospitals would not find the reporting intrusive. The commentor informs us the law allows no such exception.

Response: The commentor is correct. The TMA is aware of the Paperwork Reduction Act requirements. The Paperwork Reduction Act requirements do not apply in this case as the collection of information is standardized and will affect less than nine entities per year.

III. Regulatory Procedures

Executive Order 12866 requires that a regulatory impact analysis be performed on any major rule. A ''major rule'' is defined as one that would result in the annual effect on the national economy of $100 million or more, or have other substantial impact. The Regulatory Flexibility Act (RFA) requires that each Federal Agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities.

This final rule is not major rule under the Congressional Review Act. The changes set forth in this final rule are minor revisions to existing regulation. The changes made in this final rule involve an expansion of TRICARE benefits. In addition, this final rule will have minor impact and will not significantly affect a substantial number of small entities. In light of the above, no regulatory impact analysis is required.

The rule has been designated as significant and has been reviewed by the Office of Management and Budget as required under the provisions of Executive Order 12866.

The final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

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

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

2. Section 199.4 is amended as follows:

a. Revise paragraph (d)(3)(v) introductory text preceding the Note;

b. Remove paragraph (d)(3)(v)(A);

c. Redesignate paragraphs (d)(3)(v)(B) and (d)(3)(v)(D) as (d)(3)(v)(A) through (d)(3)(v)(C);

d. Revise newly designated paragraphs (d)(3)(v)(A) and (d)(3)(v)(C);

e. Revise paragraph (e)(5); and

f. Add paragraphs (e)(18)(i)(F), (e)(18)(i)(G) and (e)(21).

The additions and revisions read as follows:

§ 199.4 Basic program benefits.

* * * * *

(d) * * *

(3) * * *

(v) *Ambulance.* Civilian ambulance service is covered when medically necessary in connection with otherwise covered services and supplies and a covered medical condition. For the purpose of TRICARE payment, ambulance service is an outpatient service (including in connection with maternity care) with the exception of otherwise covered transfers between hospitals which are cost-shared on an inpatient basis. Ambulance transfers from a hospital based emergency room to another hospital more capable of providing the required care will also be cost-shared on an inpatient basis.

* * * * *

(A) Ambulance service cannot be used instead of taxi service and is not payable when the patient's condition would have permitted use of regular private transportation; nor is it payable when

transport or transfer of a patient is primarily for the purpose of having the patient nearer to home, family, friends, or personal physician. Except as described in paragraph (d)(3)(v)(C)(*1*) of this section transport must be to the closest appropriate facility by the least costly means.

* * * * *

(C) Except as described in paragraph (d)(3)(v)(C)(1)(*1*) of this section, ambulance services by other than land vehicles (such as a boat or airplane) may be considered only when the pickup point is inaccessible by a land vehicle, or when great distance or other obstacles are involved in transporting the patient to the nearest hospital with appropriate facilities and the patient's medical condition warrants speedy admission or is such that transfer by other means is contraindicated.

(*1*) Advanced life support air ambulance and certified advanced life support attendant are covered services for solid organ and stem cell transplant candidates.

(*2*) Advanced life support air ambulance and certified advanced life support attendant shall be reimbursed subject to standard reimbursement methodologies.

* * * * *

(e) * * *

(5) *Transplants.* (i) *Organ transplants.* Basic Program benefits are available for otherwise covered services or supplies in connection with an organ transplant procedure, provided such transplant procedure is in accordance with accepted professional medical standards and is not considered unproven.

(A) *General.* (*1*) Benefits may be allowed for medically necessary services and supplies related to an organ transplant for:

(*i*) Evaluation of potential candidate's suitability for an organ transplant, whether or not the patient is ultimately accepted as a candidate for transplant.

(*ii*) Pre- and post-transplant inpatient hospital and outpatient services.

(*iii*) Pre- and post-operative services of the transplant team.

(*iv*) Blood and blood products.

(*v*) FDA approved immunosuppression drugs to include off-label uses when determined to be medically necessary for the treatment of the condition for which it is administered, according to accepted standards of medical practice.

(*vi*) Complications of the transplant procedure, including inpatient care, management of infection and rejection episodes.

(*vii*) Periodic evaluation and assessment of the successfully transplanted patient.

(*viii*) The donor acquisition team, including the costs of transportation to the location of the donor organ and transportation of the team and the donated organ to the location of the transplant center.

(*ix*) The maintenance of the viability of the donor organ after all existing legal requirements for excision of the donor organ have been met.

(*2*) TRICARE benefits are payable for recipient costs when the recipient of the transplant is a CHAMPUS beneficiary, whether or not the donor is a CHAMPUS beneficiary.

(*3*) Donor costs are payable when:

(*i*) Both the donor and recipient are CHAMPUS beneficiaries.

(*ii*) The donor is a CHAMPUS beneficiary but the recipient is not.

(*iii*) The donor is the sponsor and the recipient is a CHAMPUS beneficiary. (In such an event, donor costs are paid as a part of the beneficiary and recipient costs.)

(*iv*) The donor is neither a CHAMPUS beneficiary nor a sponsor, if the recipient is a CHAMPUS beneficiary. (Again, in such an event, donor costs are paid as a part of the beneficiary and recipient costs.)

(*4*) If the donor is not a CHAMPUS beneficiary, TRICARE benefits for donor costs are limited to those directly related to the transplant procedure itself and do not include any medical care costs related to other treatment of the donor, including complications.

(*5*) TRICARE benefits will not be allowed for transportation of an organ donor.

(B) [Reserved]

(ii) *Stem cell transplants.* TRICARE benefits are payable for beneficiaries whose conditions are considered appropriate for stem cell transplant according to guidelines adopted by the Executive Director, TMA, or a designee.

* * * * *

(18) * * *

(i) * * *

(F) Heart valve surgery.

(G) Heart or Heart-lung Transplantation.

* * * * *

(21) *Pulmonary rehabilitation.* TRICARE benefits are payable for beneficiaries whose conditions are considered appropriate for pulmonary rehabilitation according to guidelines adopted by the Executive Director, TMA, or a designee.

* * * * *

3. Section 199.6 is amended by revising paragraphs (b)(4)(ii) and (b)(4)(iii) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(b) * * *

(4) * * *

(ii) *Organ transplant centers.* To obtain TRICARE approval as an organ transplant center, the center must be a Medicare approved transplant center or meet the criteria as established by the Executive Director, TMA, or a designee.

(iii) *Organ transplant consortia.* TRICARE shall approve individual pediatric organ transplant centers that meet the criteria established by the Executive Director, TMA, or a designee.

* * * * *

4. Section 199.7 is amended by revising paragraph (f)(1)(ii) to read as follows:

§ 199.7 Claims submission, review, and payment.

* * * * *

(f) * * *

(1) * * *

(ii) *Time limit on preauthorization.* Approved preauthorizations are valid for specific periods of time, appropriate for the circumstances presented and specified at the time the preauthorization is approved. In general, preauthorizations are valid for 30 days. If the preauthorized service or supplies are not obtained or commenced within the specified time limit, a new preauthorization is required before benefits may be extended. For organ and stem cell transplants, the preauthorization shall remain in effect as long as the beneficiary continues to meet the specific transplant criteria set forth in the TRICARE/CHAMPUS Policy Manual, or until the approved transplant occurs.

* * * * *

5. Section 199.15 is amended by revising paragraph (b)(4)(ii)(C) to read as follows:

§ 199.15 Quality and utilization review peer review organization program.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(C) An approved preauthorization shall state the number of days, appropriate for the type of care involved, for which it is valid. In general, preauthorizations will be valid for 30 days. If the services or supplies are not obtained within the number of days specified, a new preauthorization request is required. For organ and stem cell transplants, the preauthorization shall remain in effect as long as the beneficiary continues to meet the specific transplant criteria set forth in the TRICARE/CHAMPUS Policy

Manual, or until the approved transplant occurs.

* * * * *

Dated: June 11, 2002.

L.M. Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–15220 Filed 6–24–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 341

Deputy Secretary of Defense

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final regulation announces the authority of the Deputy Secretary of Defense, Dr. Paul Wolfowitz, to act for the Secretary of Defense and to exercise the powers of the Secretary of Defense upon any and all matters concerning which the Secretary of Defense is authorized to act pursuant to law. It further permits the Deputy Secretary to make specific delegations of this authority in appropriate cases.

EFFECTIVE DATE: January 26, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Munson, Directorate of Organizational and Management Planning, Office of the Director, Administration and Management, Office of the Secretary of Defense, 1950 Defense Pentagon, Washington, DC 20301–1950, telephone 703–697–1143.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 32 CFR part 341 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section 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 this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities because it does not change existing DoD practices and it primarily affects the internal activities of the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that this rule does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements have been submitted to OMB for review.

Federalism (Executive Order 13132)

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 341

Organization and functions (Government agencies).

Accordingly, Chapter I, Subchapter R, of title 32 of the Code of Federal Regulations is amended to add part 341 to read as follows:

PART 341—DEPUTY SECRETARY OF DEFENSE

Sec.

341.1 Purpose.

Authority: 10 U.S.C. 301.

§ 341.1 Purpose.

(a) In accordance with the authorities contained in 10 U.S.C. and except as expressly prohibited by law, Deputy Secretary of Defense Paul D. Wolfowitz has full power and authority to act for the Secretary of Defense and to exercise the powers of the Secretary of Defense upon any and all matters concerning which the Secretary of Defense is authorized to act pursuant to law.

(b) The all-inclusive authority reflected herein may not be delegated in toto; however, the Deputy is authorized to make specific delegations, as required.

Dated: June 18, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–15913 Filed 6–24–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–034]

Safety Zone; Captain of the Port Detroit Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Detroit Zone during July 2002. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Detroit Zone.

DATES: Effective from 12:01 a.m. (Eastern Time) on July 1, 2002 to 11:59 p.m. (Eastern Time) on July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, MI at (313) 568–9580.

SUPPLEMENTARY INFORMATION: The Coast Guard is implementing the permanent safety zones in 33 CFR 165.907 (66 FR 27868, May 21, 2001), for fireworks displays in the Captain of the Port Detroit Zone during July 2002. The following safety zones are in effect for fireworks displays occurring in the month of July 2002:

(1) *City of Wyandotte Fireworks, Wyandotte, MI.* Location: The waters off the breakwall between Oak & Van Alstyne St., Detroit River bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°12′ N, 083°09′ W on July 2, 2002 from 9:15 p.m. until 10:15 p.m.

(2) *Caseville Fireworks, Caseville, MI.* Location: The waters off the Caseville breakwall, Saginaw River bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43°55′ N, 083°17′ W, on July 3, 2002, from 10 p.m. until 11 p.m.

(3) *Lake Erie Metro Park Fireworks.* Location: The waters off the Brownstown Wave Pool area, Lake Erie bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°03′ N, 083°11′ W, on July 4, 2002, from 10 p.m. until 11 p.m.

(4) *Trenton Fireworks Display, Trenton, MI.* Location: All waters of the Trenton Channel within a 300-yard radius of the fireworks barge in approximate position 42°09′ N, 083°10′ W, about 200 yards east of Trenton, in the Trenton Channel on July 4, 2002, from 10 p.m. until 11 p.m.

(5) *Port Sanilac Fireworks, Port Sanilac, MI.* Location: The waters off the South Harbor breakwall, Lake Huron bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43°25′ N, 082°31′ W on July 4, 2002, from 10 p.m. until 11 p.m.

(6) *City of Ecorse Water Festival Fireworks, Ecorse, MI.* Location: All waters of the Ecorse Channel within a 300-yard radius of the fireworks barge in approximate position 42°14′ N, 083°09′ W, at the northern end of Mud Island, Ecorse, on July 4, 2002, from 10 p.m. until 11 p.m.

(7) *Port Austin Fireworks.* Location: The waters off the Port Austin breakwall on Lake Huron, bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43°03′ N, 082°40′ W, on July 4, 2002, from 10 p.m. until 11 p.m.

(8) *Tawas City 4th of July Fireworks, Tawas, MI.* Location: The waters off the Tawas City Pier, Lake Huron bounded by the arc of a circle with a 300-yard radius with its center in approximate position 44°13′ N, 083°30′ W, on July 4, 2002 from 10 p.m. until 11 p.m.

(9) *Belle Maer Harbor 4th of July Fireworks, Harrison Township, MI.* Location: All waters of Lake St. Clair within a 300-yard radius of the fireworks barge in approximate position 42°36′ N, 082°47′ W, about 400 yards east of Belle Maer Harbor, Lake St. Clair—Anchor Bay on July 4, 2002, from 10 p.m. until 11 p.m.

(10) *Grosse Ile Yacht Club Fireworks, Grosse Ile, MI.* Location: The waters off the Grosse Ile Yacht Club deck, Detroit River bounded by the arc of a circle with a 300-yard radius with its center approximately located at 42°05′ N, 083°09′ W on July 4, 2002 from 9 p.m. to 10 p.m.

(11) *Oscoda Township Fireworks.* Location: The waters off the DNR Boat Launch at the mouth of the Ausable River bounded by the arc of a circle with a 300-yard radius with its center in approximate position 44°19′ N, 083°25′ W, on July 4, 2002, from 10 p.m. until 11 p.m.

(12) *Grosse Pointe Yacht Club 4th of July Fireworks, Grosse Pointe Shores, MI.* Location: All waters of Lake St. Clair within a 300-yard radius of the fireworks barge in approximate position 42°25′ N, 082°52′ W, about 400 yards east of the Grosse Pointe Yacht Club seawall, Lake St. Clair on July 4, 2002, from 9:30 p.m. until 11 p.m.

(13) *City of St. Clair Fireworks.* Location: The waters off St. Clair City Park, St. Clair River bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°49′ N, 082°29′ W, on July 4, 2002, from 9:30 p.m. until 11:30 p.m.

(14) *Algonac Pickerel Tournament Fireworks, Algonac, MI.* Location: All waters of the St. Clair River within a 300-yard radius of the fireworks barge in approximate position 42°37′ N, 082°32′ W, between Algonac and Russell Island, St. Clair River—North Channel, on July 5, 2002, from 9:45 p.m. until 10:30 p.m.

(15) *Lexington Independence Festival Fireworks, Lexington, MI.* Location: All waters of Lake Huron within a 300-yard radius of the fireworks barge in approximate position 43°13′ N, 082°30′ W, about 300 yards east of the Lexington breakwall, Lake Huron, on July 6, 2002, from 7 p.m. until 12 a.m.

All coordinates are North American Datum 1983. In order to ensure the safety of spectators and transiting vessels, these safety zones will be in effect for the duration of the events. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Detroit to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Group Detroit on channel 16, VHF–FM.

Dated: June 7, 2002.

P.G. Gerrity,

Commander, Coast Guard, Captain of the Port Detroit.

[FR Doc. 02–15795 Filed 6–24–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–069]

RIN 2115–AA97

Regulated Navigation Area; Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel and New Jersey Pierhead Channel, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is amending a Regulated Navigation Area (RNA) to add restrictions on vessels transiting the Bergen Point West Reach of the Kill Van Kull during U.S. Army Corps of Engineers dredging operations in that area. This action is necessary to provide for the safety of life and property on navigable waters during dredging operations that impinge upon the navigable portion of the channel and require the temporary relocation of navigational aids. This action is intended to reduce the risks of collisions, groundings and other navigational mishaps.

DATES: This rule is effective from June 17, 2002 to March 30, 2003. Comments and related material must reach the Coast Guard on or before August 26, 2002.

ADDRESSES: The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–02–069 and are available for inspection or copying at Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, room 203, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander C. Nichols, Vessel Traffic Service, Coast Guard Activities New York at (718) 354–4191.

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 (CGD01–02–069), 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 to the Coast Guard at the address under **ADDRESSES.** 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 Coast Guard, 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 rule in view of them.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The U.S. Army Corps of Engineers is conducting an extensive navigation improvement project in Kill Van Kull and Newark Bay, New York and New Jersey. The project, which is being conducted in nine distinct phases, began in April 1999 and will continue through approximately April 2005. In anticipation of the project and its probable impact on navigation, the Coast Guard worked with local pilots and maritime users to develop restrictions on vessels transiting the area during dredging operations. As a result of that cooperative process, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (63 FR 72219) on December 31, 1998, discussing our intention to establish a Regulated Navigation Area (RNA) for Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel and New Jersey Pierhead Channel, New York and New Jersey. We received no letters commenting on the proposed rule. No public hearing was requested and none was held. On April 15, 1999, we published a Final Rule in the **Federal Register** (64 FR 18577) codifying the RNA at 33 CFR 165.165.

Now that dredging operations have begun in the Bergen Point portion of the navigation improvement project, it has become evident that the existing RNA is insufficient to ensure the interests of safe navigation on that portion of the waterway. On May 16, 2002, Kill Van Kull Channel Lighted Buoys 10 and 12 (LLNR 37300 and 37310) and Bergen Point Lighted Buoy 14 (LLNR 37325) had to be relocated to facilitate dredging of the Kill Van Kull. Since these buoys were relocated, the Bergen Point Buoy has been hit and moved off-station requiring Coast Guard assets to be diverted from other safety and security missions in the Port of New York and New Jersey while re-establishing the buoy on-station. More importantly, other vessels have been unable to navigate within the temporary channel boundaries. More than half of the vessels over 700 feet long transiting this area were unable to safely navigate the narrow southern channel during periods of high current and moderate winds. And there have been several near collisions between tugs and barges operating in the area. Unless additional regulations are established for vessels operating in the vicinity of Bergen Point, the likelihood of similar future mishaps will increase as continued dredging operations impinge upon the navigable portion of the channel.

In light of the foregoing, we have determined that immediate action is required to establish additional regulations for vessels operating in the vicinity of Bergen Point while U.S. Army Corps of Engineers dredging operations continue. These circumstances provide good cause for not publishing an NPRM. Similarly, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this rule's effective date would be unnecessary and contrary to public interest since immediate action is needed to restrict commercial vessel transits in the waterway and protect the maritime public from the hazards associated with changing vessel traffic patterns during this dredging project.

Background and Purpose

The United States Army Corps of Engineers and the Port Authority of New York/New Jersey commenced an extensive channel-dredging project in the Kill Van Kull in April 1999. On May 16, 2002, Kill Van Kull Channel Lighted Buoys 10 and 12 (LLNR 37300 and 37310) and Bergen Point Lighted Buoy 14 (LLNR 37325) were relocated to facilitate dredging of the Bergen Point West Reach of the Kill Van Kull. Since these buoys were relocated, one vessel collided with the Bergen Point Buoy and moved it off-station requiring Coast Guard assets to be diverted from other safety and security missions in the Port of New York and New Jersey while re-establishing the buoy on its assigned location. More than half of the vessels over 700 feet long transiting this area were unable to safely navigate the narrow southern channel during periods of high current and moderate winds. Instead, they had to depart from the temporary boundaries of the channel and proceed through a portion of the closed area north of the Kill Van Kull Lighted Buoy 10. There have also been several near collisions between tugs and barges in this area. In order to protect life, property and the marine environment, the Coast Guard is establishing the following additional requirements for commercial vessels transiting Bergen Point West Reach of the Kill Van Kull:

Tug Requirements: All vessels 350 feet in length, or greater, excluding tugs with tows, require one assist tug. All vessels 700 feet in length, or greater, excluding tugs with tows, require two assist tugs. All vessels 900 feet in length, or greater, excluding tugs with tows, require three assist tugs.

Tidal Current Restrictions: Vessels 700 feet in length, or greater, are restricted to movements within one hour before or after slack water, as measured from the Bergen Point current station.

Astern Tows: Hawser tows are not permitted unless an assist tug accompanies the tow.

Wind Conditions: In sustained winds from 20 to 34 knots: (1) Cargo ships may not transit; (2) tankers in ballast may not transit; (3) tugs pushing or towing alongside tank barges 350 feet in length, or greater, in light condition, require an assist tug. In sustained winds greater than 34 knots, vessels 300 gross tons or greater and all tugs with tows are prohibited from transiting.

Nearly identical restrictions were imposed during a previous dredging project conducted in the same area from 1991 to 1992. They were instituted after three groundings, which resulted in one oil spill and one channel blockage. In anticipation of the current dredging project, the Coast Guard worked closely with local pilots and commercial waterway users to devise a system of regulations that would reduce the likelihood of similar mishaps from recurring. We sought to determine whether less restrictive regulations could be developed that would adequately ensure the interests of safe navigation. After extensive consultation, computer simulations and other analysis, we concluded that the regulations codified at 33 CFR 165.165 would adequately protect the interests of safe navigation in the vicinity of Bergen Point during the U.S. Army Corps of Engineers navigation improvement project. As previously discussed, recent, actual experience with those regulations demonstrates the need for these additional restrictions on

commercial vessels operating in that area. Vessel Traffic Service New York has already met with Pilots and Tug companies operating in the port to explain the need for these restrictions. These restrictions will be in place until March 30, 2003. They will be cancelled if dredging operations in the vicinity of Bergen Point conclude before that date.

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).

We expect 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 finding is based on the fact that the overwhelming majority of vessels transiting through the Bergen Point portion of the Kill Van Kull that would be required by this rule to utilize tug assistance are already employing that service as a matter of prudence; only those vessels not observing this ''best practice'' will be affected. Vessels 700 feet in length, or greater, could encounter slight delays while awaiting optimal tidal currents. Those delays can be mitigated or avoided by appropriate arrival and departure planning. The actual impact of this rule is minimal insofar as each of the provisions of this rule could be imposed, on a case-by-case basis, upon individual vessels transiting through Bergen Point under Vessel Traffic Services New York's existing authority to establish VTS Measures pursuant to 33 CFR 161.11. Rather than rely upon ad hoc measures, we believe that the maritime public is better served by having advance, certain knowledge of these requirements to facilitate ready-reference and planning. Advance notifications will be made to the local maritime community by the Local Notice to Mariners, marine information broadcasts, and at New York Harbor Operations Committee meetings.

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. This rule will affect the following entities, some of which might be small entities: the owners or operators of commercial vessels intending to transit Bergen Point West Reach of the Kill Van Kull. This RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: Kill Van Kull accommodates approximately 26,000 vessels transits annually; the overwhelming majority of vessels that would be required to utilize tug assistance while transiting the Bergen Point portion of the Kill Van Kull are already employing that service as a matter of prudence; only the small percentage of vessels not observing this ''best practice'' will be affected by this regulation; we know of no specific small entities among that small number. Any small entities that might be affected by this rule are invited to submit comments, which may result in modifications to the rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its potential effects on them and participate in the rulemaking. If your small business or organization would be affected by this rule and you have questions concerning its provisions or options for compliance, please call Lieutenant Commander C. Nichols, Vessel Traffic Service, Coast Guard Activities New York at (718) 354–4191. 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 would call 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 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 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 does 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 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 M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it revises a Regulated Navigation Area. 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 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. From June 17, 2002 to March 30, 2003, amend § 165.165 to add paragraph (d)(10) to read as follows:

§ 165.165 Regulated Navigation Area; Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel and New Jersey Pierhead Channel, New York and New Jersey

* * * * *

(d) * * *

(10) *Bergen Point West Reach.* In addition to the requirements in paragraphs (d)(1) through (d)(9) of this section, the following provisions apply to vessels transiting in or through Work Areas (4) and (5):

(i) *Tug requirements.* All vessels 350 feet in length, or greater, excluding tugs with tows, require one assist tug. All vessels 700 feet in length, or greater, excluding tugs with tows, require two assist tugs. All vessels 900 feet in length, or greater, excluding tugs with tows, require three assist tugs.

(ii) *Tidal current restrictions.* Vessels 700 feet in length, or greater, are restricted to movements within one hour before or after slack water, as measured from the Bergen Point current station.

(iii) *Astern tows.* Hawser tows are not permitted unless an assist tug accompanies the tow.

(iv) *Sustained winds from 20 to 34 knots.* In sustained winds from 20 to 34 knots:

(A) cargo ships and tankers in ballast may not transit Work Areas (4) and (5);

(B) tugs pushing or towing alongside tank barges 350 feet in length, or greater, in light condition, require an assist tug in Work Areas (4) and (5).

(v) *Sustained winds greater than 34 knots.* In sustained winds greater than 34 knots, vessels 300 gross tons or greater and all tugs with tows are prohibited from transiting Work Areas (4) and (5).

Dated: June 17, 2002.

V.S. Crea,

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

[FR Doc. 02–15967 Filed 6–24–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA261–0343a; FRL–7220–4]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from metal parts and products coating operations. We are approving Rule 4603; a rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 26, 2002, without further notice, unless EPA receives adverse comments by July 25, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814; and,

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local Agency	Rule #	Rule title	Adopted	Submitted
SJVUAPCD	4603	Surface Coating of Metal Parts and Products	12/20/01	02/20/02

On March 15, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

On October 22, 2001, EPA reviewed and gave a limited approval and limited disapproval to Rule 4603 (*see* 66 FR 53340) when incorporating the September 21, 2000 version of Rule 4603 within the SIP. CARB has made no intervening submittals of Rule 4603.

C. What Is the Purpose of the Submitted or Rule Revisions?

SJVUAPCD's December 20, 2001 amendments to Rule 4603 served two purposes. The first purpose was to remedy the deficiencies noted in our October 2001 limited approval and limited disapproval. These remedies will be discussed in the following section II.B. The second purpose was to incorporate organic solvent use, disposal, and storage requirements within the rule. These changes are summarized below.

—The rule's applicability statement was amended to include organic solvent cleaning as well as the storage and disposal of organic solvents and waste solvent materials and twenty-nine new definitions were added to the rule.

—An exemption for stripping cured coating, adhesives, and inks was added.

—Evaporative loss minimization requirements will sunset on November 14, 2002 to be replaced with organic solvent cleaning, storage, and disposal requirements.

—High volume low pressure spray application requirements were defined.

—Solvent compliance statement requirements were added.

—Test methods for determining capture efficiency, coating viscosity, and destruction efficiency were updated and test methods were added for determining vapor pressure.

The TSD has more information about these amendments to Rule 4603.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). The SJVUAPCD regulates an ozone nonattainment area (*see* 40 CFR part 81), so Rule 4603 must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Document,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. ''Control of Volatile Organic Emissions from Existing Stationary Sources Volume VI: Surface Coating of Miscellaneous Metal Parts and Products,'' USEPA, June 1978, EPA–450/2–78–015.

B. Does the Rule Meet the Evaluation Criteria?

We believe the rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations.

Several portions of the September 21, 2000 version of Rule 4603 were inconsistent with EPA policy and guidance. On October 22, 2001, EPA reviewed and gave a limited approval and limited disapproval to Rule 4603 when incorporating the September 21, 2000 version of Rule 4603 within the SIP. CARB's February 20, 2002 submittal is in part to cure the deficiencies noted in our limited disapproval. SJVUAPCD has corrected these deficiencies in the manner described below.

—The deficiency at section 4.1 has been remedied by removing section 4.1 and adding section 4.2. Section 4.2 is consistent with EPA policy concerning noncompliant coating use.

—The viscosity limits are accompanied by an adequate test method for determining compliance with the rule.

—SJVUAPCD staff provided an analysis showing that the excess VOC emissions allowed by using an 880 gr/l versus a 420 gr/l emissions limit for the solid film lubricant specialty category represented a de minimis amount: less than 1% of the total metal parts and product source category. While SJVUAPCD's methodology did not strictly follow EPA's guidance on the subject, given the few sources using solid film lubricant and the small amount of related VOC emissions, the methodology was adequate for making the de minimis demonstration. Furthermore, the SJVUAPCD resolved to monitor VOC emissions from the solid film specialty category and take appropriate action to reduce these emissions should they exceed a de minimus amount.

In conclusion, SJVUAPCD corrected the three deficiencies that provoked our earlier limited disapproval. The TSD has more detailed information on our evaluation.

C. EPA Recommendations To Further Improve the Rule

We have no recommendations.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register,** we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by July 25, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 26, 2002. This will incorporate this rule into the federally enforceable SIP.

III. Background Information

Why Was the Rule Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 26, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 9, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(294)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(294) * * *
(i) * * *
(A) * * *
(*2*) Rule 4603 adopted on April 11, 1991, and amended on December 20, 2001.
* * * * *

[FR Doc. 02–15871 Filed 6–24–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI104–02–7334; FRL–7226–8]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Excess Volatile Organic Compound Emissions Fee Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a rule that revises Wisconsin's State Implementation Plan (SIP) for ozone. The rule requires major stationary sources of volatile organic compounds (VOC) in the Milwaukee nonattainment area to pay a fee to the state if the area fails to attain the one-hour national ambient air quality standard for ozone by 2007. The fee must be paid beginning in 2008 and in each calendar year thereafter, until the area is redesignated to attainment of the one-hour ozone standard. Wisconsin submitted this rule on December 22, 2000, as part of the state's demonstration of attainment for the one-hour ozone standard. EPA proposed approval of this SIP revision on March 6, 2002.

EFFECTIVE DATE: This rule is effective on August 26, 2002.

ADDRESSES: Copies of the SIP revision and EPA's analysis are available for inspection at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action Is EPA Taking?

The EPA is approving a rule that revises Wisconsin's ozone SIP. The rule requires major stationary sources of VOC in the Milwaukee nonattainment area to pay a fee to the state if the area fails to attain the one-hour national ambient air quality standard for ozone by 2007. The fee must be paid beginning in 2008 and in each calendar year thereafter, until the area is redesignated to attainment of the one-hour ozone standard.

The EPA is approving this rule because it is consistent with the requirements of the Clean Air Act. This approval finalizes EPA's March 6, 2002 proposed approval.

II. Did Anyone Comment on the Proposed Approval?

We received no comments on our March 6, 2002 proposal to approve Wisconsin's excess emissions fee rule.

III. What Administrative Requirements Did EPA Consider?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain an unfunded mandate, nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing Wisconsin's rule in today's notice, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order, and has determined that the rule's requirements do not constitute a taking. This rule does not impose an information collection burden under the

provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 26, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 17, 2002.

Robert Springer,

Acting Regional Administrator, Region 5.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(106) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(106) Wisconsin submitted a revision to its State Implementation Plan for ozone on December 22, 2000. The rule requires major stationary sources of volatile organic compounds in the Milwaukee nonattainment area to pay a fee to the state if the area fails to attain the one-hour national ambient air quality standard for ozone by 2007.

(i) Incorporation by reference. The following section of the Wisconsin Administrative code is incorporated by reference: NR 410.06 as created and published in the (Wisconsin) Register January, 2001, No. 541, effective February 1, 2001.

[FR Doc. 02–15870 Filed 6–24–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket 99–231; FCC 02–151]

Spread Spectrum Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to improve spectrum sharing by unlicensed devices operating in the 2.4 GHz band (2400–2483.5 MHz), to provide for introduction of new digital transmission technologies, and eliminate unnecessary regulations for spread spectrum systems.

DATES: Effective July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Neal McNeil, Office of Engineering and Technology, (202) 418–2408, TTY (202) 418–2989, e-mail: nmcneil@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second *Report and Order,* ET Docket 99–231, FCC 02–151, adopted May 16, 2002 and released May 30, 2002. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. It is also available on the Commission's internet site at www.fcc.gov. The complete text of this document also may be purchased from the Commission's duplication contractor Qualex International, (202) 863–2893 voice, (202) 863–2898 Fax, *qualexint@aol.com* email, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554.

Summary of Second Report and Order

1. *Digital Systems.* In the *Further Notice of Proposed Rule Making* (''*FNPRM*'') 66 FR 31585, June 12, 2001, in this proceeding, we observed that a number of new digital modulation technologies have been developed that have spectrum characteristics similar to direct sequence spread spectrum systems. The digital systems spread their transmitted energy across a wide bandwidth, thereby minimizing the amount of energy transmitted in any one portion of the occupied frequency band. Therefore, such digital modulation systems may exhibit no more potential to cause interference to other devices than direct sequence systems. However, because digital modulation systems do not meet the Commission's definition of a spread spectrum system, they have not been allowed to operate under § 15.247. In the *FNPRM*, we proposed to amend § 15.247 to provide for use of these new digital technologies in the 915 MHz, 2.4 GHz, and 5.7 GHz bands. We invited comment on whether these technologies should be allowed to operate at the same power levels as direct sequence spread spectrum systems, specifically 1 Watt maximum output power with a maximum power spectral density of 8 dBm per 3 kHz.

2. Based on analysis of the record, we conclude that systems using digital modulation techniques can operate under the same rules as direct sequence spread spectrum devices in the 915 MHz, 2.4 GHz, and 5.7 GHz band without posing additional risk of interference. Therefore, we will remove any regulatory distinction between direct sequence spread spectrum systems and systems using other forms of digital modulation. We amend part 15 to replace references to ''direct sequence spread spectrum'' with the term ''digital modulation'' and permit all types of digitally modulated systems to be regulated under § 15.247. ''Digital modulation'' in the context of 47 CFR 15.247 will have the same meaning as defined in 47 CFR 15.403(b). This change will permit the authorization of newly developing high data rate technologies. Under the new rules, digital modulation systems will be subject to the same power output maximum, 1 Watt, and power spectral density limits, 8 dBm per 3 kHz, as direct sequence spread spectrum systems.

3. *Processing Gain.* The rules currently require direct sequence spread spectrum devices to have a processing gain of at least 10 dB. Processing gain represents the improvement to the received signal-to-noise ratio, after

filtering to the information bandwidth, from the spreading/dispreading function. The processing gain is also a measure of a direct sequence systems ability to withstand interference. In the *FNPRM* we stated that as the spread spectrum industry has matured, it is not clear that the processing gain requirement continues to be necessary. Manufacturers have an incentive to design their systems to include processing gain in order for their device to operate properly when located near other radio frequency devices. We further noted that it has become increasingly difficult to determine true processing gain of certain direct sequence spread spectrum systems due in part to a diversity of opinion within the industry as to the definition of processing gain for these systems and the proper way to measure it. We also noted that uncertainties about the processing gain requirement can be a significant impediment to the introduction of new technologies. In light of these factors, the *FNPRM* proposed to eliminate the processing gain requirement for direct sequence spread spectrum systems.

4. Consistent with our decision to allow operation of digital modulation systems with spectrum characteristics similar to those of spread spectrum systems, we find that it is no longer desirable to maintain the processing gain requirement for direct sequence systems. The processing gain requirement was incorporated into the rules to ensure that systems taking advantage of the higher power levels afforded spread spectrum systems were indeed direct sequence spread spectrum systems and therefore have some tolerance to interference. We believe that manufacturers have a market-driven incentive to design their systems with the ability to operate properly when located near other radio frequency devices.

5. *Frequency Hopping Spread Spectrum Systems.* We will allow frequency hopping spread spectrum systems to use as few as fifteen hopping channels with bandwidths up to 5 MHz and no minimum band occupancy requirements, provided output power is reduced to 125 mW. This modification of our regulations for frequency hopping systems will provide greater flexibility without significantly increasing the risk of interference to other users. In the *First Report and Order,* 66 FR 57557, September 25, 2000, in this proceeding, we determined that frequency hopping systems with bandwidths between 1 MHz and 5 MHz may operate in the 2.4 GHz band with a minimum of 15 hopping channels and 125 mW output power with minimal interference potential. Nothing in the record of this proceeding demonstrates that frequency hopping systems with bandwidths of 1 MHz or less cannot also operate effectively with a minimum of fifteen hopping channels with a similar power reduction. The reduction of maximum peak power from 1 Watt to 125 mW will offset any increased potential for interference caused by use of the reduced hopset, regardless of channel bandwidth. We find it unnecessary to require frequency hopping systems to occupy a minimum percentage of the 2.4 GHz band. Our primary concern for the operation of devices in the 2.4 GHz band is interference avoidance. Although a minimum bandwidth occupancy requirement may, in some cases, reduce the interference potential of frequency hopping systems, it is not the only method by which the systems can efficiently share the band. Indeed, such a requirement may actually negate the possibility for system designers to implement more efficient spectrum sharing techniques as they see fit. The simple, unambiguous rules we are adopting in this *Second Report and Order* will allow manufacturers the freedom to design an array of frequency hopping systems that effectively share the 2.4 GHz band.

6. We will not require frequency hopping systems that use a reduced hopset to employ adaptive hopping techniques. The power reduction we are adopting for these devices is sufficient to mitigate any possible increase in interference potential due to the smaller number of hopping channels. Furthermore, operation pursuant to the modified rules will not pose a greater interference threat than systems authorized under our former rules. We note that § 15.247(h) of the rules permits the use of intelligent or adaptive hopping techniques in order to avoid transmitting on occupied frequencies. We believe that § 15.247(h) provides sufficient flexibility for manufacturers to design products which incorporate adaptive hopping in circumstances where it would be beneficial. The amended rules would permit manufacturers to build products that include adaptive techniques such as a product that includes both a digital and a frequency hopping transmitter, where the frequency hopping transmitter avoids or suppresses its transmissions when the digital transmitter is operating.

Final Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act (''RFA''),[1] an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Further Notice of Proposed Rule Making (''*FNPRM*'') in this proceeding, ET Docket 99–231.[2] The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. As described more fully below, we find that the rules we adopt in the *Second Report and Order* will not have a significant economic impact on a substantial number of small entities.[3] We have nonetheless provided this Final Regulatory Flexibility Analysis (''FRFA'') to provide a fuller record in this proceeding. This FRFA conforms to the RFA.[4]

A. Need for and Objective of the Rules

8. The Commission's spread spectrum rules have been a tremendous success. A wide variety of devices have been introduced under these rules for business and consumer use including cordless telephones and computer local area networks. Moreover, the past few years have witnessed the development of industry standards, such as IEEE 802.11b, Bluetooth, and Home RF, that promise to greatly expand the number and variety of devices that will operate in the 2.4 GHz band. We anticipate the introduction of wireless headsets and computer connections for cellular and PCS phones, wireless computer peripherals such as printers and keyboards, and a host of new wireless Internet appliances that will use this band.

9. The rules adopted in the *Second Report and Order* provide for the introduction of new digital transmission technologies, eliminate unnecessary regulations for spread spectrum systems, and improve spectrum sharing by unlicensed devices operating in the 915 MHz (902–928 MHz), 2.4 GHz (2400–2483.5 MHz), and 5.7 GHz (5725–5850 MHz) bands. Specifically, the Second Report and Order revises § 15.247 of the Commission's rules to allow new digital transmission technologies and direct sequence spread spectrum systems to operate under the same rules in the 915 MHz, 2.4 GHz,

[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] See ET Docket 99–231, FCC 01–158, 66 FR 31585, June 12, 2001.

[3] Thus, we could certify that an analysis is not required. See 5 U.S.C. 605(b).

[4] See 5 U.S.C. 604.

and 5.7 GHz bands.[5] We also remove the requirement that direct sequence spread spectrum systems must demonstrate at least 10 dB of processing gain. Finally, the *Second Report and Order* modifies the rules for frequency hopping spread spectrum systems operating in the 2.4 GHz band to reduce the amount of spectrum that must be used with certain types of operation. We take these actions to facilitate the continued development and deployment of new wireless devices for businesses and consumers.

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

10. Only the Information Technology Industry Council (''ITI'') filed comments in response to the IRFA.[6] ITI supports the Commission's proposal. They state that the proposals contained in the *FNPRM* will significantly improve sharing of the spectrum by wireless devices operating in the 2.4 GHz band.

11. ITI supports the proposal to modify § 15.247 of the Commission's rules governing frequency hopping spread spectrum devices in the 2.4 GHz band to allow as few as fifteen hopping channels. However, ITI requests that the Commission consider further modifications to permit even fewer than fifteen channels. It states that wireless devices using less than fifteen channels can be designed not to interfere with other equipment. It further states that adopting a minimum limit of hopping channels is contrary to the Commission's intent to improve flexibility for manufacturers an does not contribute to additional clarifying rulemakings.

12. ITI also supports the Commission's other proposals. Specifically, ITI urges the Commission to modify its rules to accommodate new digital modulation systems in the 915 MHz, 2.4 GHz, and 5.7 GHz bands. It states that the changes will provide manufacturers with flexibility to design non-interfering products for these bands without the need for frequent rule changes to address each new technology. Finally, ITI supports the proposal to remove the requirement that direct sequence spread spectrum systems must demonstrate at least 10 dB of processing gain. It states that the requirement is no longer necessary since manufacturers have an incentive to include processing gains to ensure that their devices operate properly when located near other radio frequency devices.

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

13. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted.[7] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdictions.''[8] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[9] A ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (''SBA'').[10]

14. The Commission has not developed a definition of small entities specifically directed toward manufacturers of unlicensed communications devices. Therefore, we will utilize the SBA definition applicable to manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA regulations, unlicensed transmitter manufacturers must have 750 or fewer employees in order to qualify as a small business concern.[11] Census Bureau data indicates that there are 858 U.S. companies that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.[12] This action will not have a negative impact on small entities that manufacture unlicensed spread spectrum devices.

15. According to SBA regulations, an electronic computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.[13] Census Bureau data indicates that there are 716 firms that manufacture electronic computers. Of those, 659 have fewer than 500 employees and qualify as small entities.[14] The remaining 57 firms have 500 or more employees; however, we unable to determine how many of those have 1,000 or fewer employees and therefore also qualify as small entities under the SBA definition.

16. According to SBA regulations, a computer terminal manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.[15] Census Bureau data indicates that there are 757 firms that manufacture computer terminals. Of those, 162 have fewer than 500 employees and qualify as small entities.[16] The remaining 11 firms have 500 or more employees; however, we unable to determine how many of those have 1,000 or fewer employees and therefore also qualify as small entities under the SBA definition.

17. According to SBA regulations, a computer peripheral equipment manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.[17] Census Bureau data indicates that there are 757 firms that manufacture computer terminal equipment. Of those, 701 have fewer than 500 employees and qualify as small entities.[18] The remaining 56 firms have 500 or more employees; however, we unable to determine how many of those have 1,000 or fewer employees and therefore also qualify as small entities under the SBA definition.

18. According to SBA regulations, a manufacturer of household appliances must have 500 or fewer employees in order to qualify as a small entity.[19] Census bureau indicates that there are 55 firms that manufacture household equipment in the ''catch all'' category for such data. Of those, 42 have fewer than 500 employees and qualify as small entities.[20] The remaining 13 firms have

[5] 47 CFR 15.247.

[6] See Information Technology Industry Council comments.

[7] 5 U.S.C. 604(a)(3).

[8] 5 U.S.C. 601(6).

[9] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[10] 15 U.S.C. 632.

[11] See 13 CFR 121.201, (NAICS) Code 334220.

[12] See U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), NAICS Code 334220.

[13] 13 CFR 121.201, NAICS Code 334111.

[14] U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, NAICS Code 334111. (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

[15] 13 CFR 121.201, NAICS Code 334111.

[16] U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, NAICS Code 334111. (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

[17] 13 CFR 121.201, NAIC Code 334119.

[18] U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, NAICS Code 334119. (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

[19] 13 CFR 121.201, NAICS Code 333298.

[20] U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, NAICS 333298 (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

500 or more employees, and therefore, unless one or more has exactly 500 employees do not qualify as small entities under the SBA definition.

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

19. Part 15 transmitters are already required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation. See 47 CFR 15.101, 15.201, 15.305, and 15.405. The new regulations will add permissible methods of operation for frequency hopping spread spectrum systems and permit systems that use digital modulation techniques to operate in the bands formerly reserved for spread spectrum operation. No new reporting or recordkeeping requirements will be required for the manufacturers of frequency hopping spread spectrum devices or systems using digital modulation.

20. This *Second Report and Order* removes the requirement that direct sequence spread spectrum systems exhibit a minimum 10 db of processing gain. Therefore, manufacturers will no longer be required to test products and submit confirmation of compliance with this regulation.

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

21. The rule modifications made in this *Second Report and Order* will facilitate the continued development and deployment of new wireless devices for business and consumers. These actions will benefit manufacturers of digitally modulated unlicensed devices and direct sequence and frequency hopping spread spectrum devices, including small entities.

24. In the *FNPRM,* we proposed to amend § 15.247 of the Commission's rules to provide for the use of systems which use new digital modulation technologies. Specifically, we proposed to allow these devices to operate in the 915 MHz, 2.4 GHz, and 5.7 GHz bands under the same technical requirement as spread spectrum systems. We invited comment on whether these technologies should be allowed to operate at the same power levels as direct sequence spread spectrum systems, specifically 1 Watt maximum output power with a maximum power spectral density of 8 dBm per 3 kHz. We also noted that the proposals for new digital devices are similar to the rules for Unlicensed National Information Infrastructure (U–NII) devices contained in Subpart E of part 15, and sought comment on whether these new digital technologies could be accommodated under those rules.

25. Based on analysis of the record, including comments from small business concerns, we have concluded that systems using digital modulation technologies may operate in the 915 MHz, 2.4 GHz, and 5.7 GHz bands under the same rules as direct sequence spread spectrum devices without posing a risk of creating additional interference. We declined to regulate these devices under an alternative set of rules.

26. The *FNPRM* also proposed to remove the requirement that direct sequence spread spectrum systems demonstrate a minimum of 10 dB of processing gain. One alternative the Commission considered was to decline to remove the requirement. However, we determined that retaining the requirement would unnecessarily hinder the introduction of new non-interfering devices in the bands.

27. The *First Report and Order* (''*First R&O*'') in this proceeding amended the spread spectrum rules to allow frequency hopping spread spectrum systems in the 2.4 GHz band to use bandwidths greater than 1 MHz but less than 5 MHz at a reduced power output of up to 125 mW.[21] These wideband frequency hopping systems are allowed to use as few as fifteen non-overlapping channels provided that the total span of hopping channels is at least 75 MHz. Frequency hopping systems with a bandwidth of up to 1 MHz were still required to use at least 75 non-overlapping hopping channels. In response to the *First R&O,* thirteen parties filed a Joint Petition for Clarification or, in the Alternative, Partial Reconsideration (''Joint Petition'').[22] The Joint Petition requested that the Commission clarify the rules adopted in the *First R&O* to specify a minimum of 15 hopping channels for any system that uses adaptive hopping techniques to avoid operating on occupied frequencies and limits its output power to 125 mW, regardless of hopping channel bandwidth.[23] In the *FNPRM,* we proposed to adopt the changes requested in the Joint Petition.

28. The majority of the commenters support the proposal to allow frequency hopping systems to use as few as fifteen hopping channels with output power not exceeding 125 mW.[24] The commenters generally agree that a reduction in maximum allowed power from 1 Watt to 125 mW is an acceptable compromise in exchange for using fewer hopping channels.

29. Proxim objects to allowing as few as fifteen hopping channels for systems in the 2.4 GHz band. Proxim believes that this proposal could lead to frequency hopping systems that do not spread their energy through a wide portion of the band, and therefore increase interference potential to other receivers. It points to the 5.7 GHz band and notes that systems operating in that band use up to 60% of the available bandwidth.[25] Proxim proposes that frequency hopping systems in the 2.4 GHz band also be required to use at least 60% of the available band. It contends that the 60% threshold would serve the needs of manufacturers while preserving the underlying sharing philosophy of the part 15 rules. Ademco also proposes that a minimum amount of bandwidth be used. Although Ademco does support the proposed reduction in the minimum number of hopping channels, it states that the fifteen channels should be required to be spread over a minimum of 90% of the band.[26] It submits that such a requirement would prevent any segment of the 2.4 GHz band from being over used.

30. We will allow frequency hopping spread spectrum systems to use as few as fifteen hopping channels with bandwidths up to 5 MHz and no minimum band occupancy requirements, provided output power is reduced to 125 mW. This modification of our regulations for frequency hopping systems will provide greater flexibility without significantly increasing the risk

[21] First Report and Order in ET Docket 99–231, 15 FCC Rcd 16244 (2000), 65 FR 57557, September 25, 2000.

[22] Joint Petition For Clarification or, in the Alternative, Partial Reconsideration, submitted on October 25, 2000, by 3Comm, Apple Computer, Cisco Systems, Dell Computer, IBM, Intel Corporation, Intersil, Lucent Technologies, Microsoft, Nokia Inc., Silicon Wave, Toshiba America Information Systems, and Texas Instruments.

[23] Adaptive hopping is accomplished by the incorporation of intelligence within a frequency hopping spread spectrum system that permits the system to recognize other users within the band so that it individually and independently chooses and adapts its hopset to avoid occupied channels.

[24] See, e.g., comments of Adtran, Inc.; The Wireless Communications Association International; Silicon Wave, Inc.; Wi-LAN, Inc.; WIDCOMM; Agere; Intel Corporation; Bluetooth SIG; Intel Corporation; and Apple Computers. See also reply comments of Telecommunications Industry Association.

[25] 125 MHz of spectrum is available at 5.7 GHz. A system using maximum a hopping channel bandwidth of 1 MHz would be required to use 75 MHz, or 60%, of the available spectrum.

[26] See Ademco comments at page 1.

of interference to other users. The reduction of maximum peak power from 1 Watt to 125 mW will offset any increased potential for interference caused by use of the reduced hopset, regardless of channel bandwidth. In addition, we find it unnecessary to require frequency hopping systems to occupy a minimum percentage of the 2.4 GHz band as Proxim and Ademco suggest. Our primarily concern for the operation of devices in the 2.4 GHz band is interference avoidance. Although a minimum bandwidth occupancy requirement may, in some cases, reduce the interference potential of frequency hopping systems, it is not the only method by which the systems can efficiently share the band. Indeed, such a requirement may actually negate the possibility for system designers to implement more efficient spectrum sharing techniques as they see fit. The simple, unambiguous rules we are adopting in this *Second Report and Order* will allow manufacturers the freedom to design an array of frequency hopping systems that effectively share the 2.4 GHz band.

31. We will not require frequency hopping systems that use a reduced hopset to employ adaptive hopping techniques. We agree with those parties who contend that the power reduction we are adopting for these devices is sufficient to mitigate any possible increase in interference potential due to the smaller number of hopping channels. Furthermore, operation pursuant to the modified rules will not pose a greater interference threat than systems already authorized under our rules.[27] We also note that § 15.247(h) of the rules permits the use of intelligent or adaptive hopping techniques in order to avoid transmitting on occupied frequencies.[28] We believe that § 15.247(h) provides sufficient flexibility for manufacturers to design products which incorporate adaptive hopping in circumstances where it would be beneficial. In accordance with the rules, manufacturers may design devices that incorporate both a frequency hopping spread spectrum transmitter and a digital modulation transmitter. Each transmitter must individually comply with applicable rules. However, the frequency hopping transmitter may adapt its hopset in order to avoid causing interference to the digital modulation transmitter.

32. *Report to Congress.* The Commission will send a copy of the *Second Report and Order,* including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[29] In addition, the Commission will send a copy of the *Second Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the SBA.[30]

33. Pursuant to the authority contained in Sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), and 303(r), parts 2 and 15 of the Commission's rule are amended.

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

List of Subjects in 47 CFR Parts 2 and 15

Communications equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 15 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

§ 2.1033 [Amended]

2. Section 2.1033 is amended by removing paragraph (b)(10) and redesignating paragraphs (b)(11) and (b)(12) as paragraphs (b)(10) and (b)(11), respectively.

PART 15—RADIO FREQEUNCY DEVICES

3. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336, and 544A.

4. Section 15.247 is amended as by:

A. Revising paragraphs (a) introductory text, (a)(1)(ii), (a)(1)(iii), (a)(2), (b)(1), (c), and (d).

B. Redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(4) and (b)(5).

C. Adding a new paragraph (b)(3).

D. Removing and reserving paragraph (e).

F. Revising paragraph (f).

The additions and revisions read as follows:

§ 15.247 Operation within the bands 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz.

(a) Operation under the provisions of this section is limited to frequency hopping and digitally modulated intentional radiators that comply with the following provisions:

(1) * * *

(ii) Frequency hopping systems operating in the 5725–5850 MHz band shall use at least 75 hopping frequencies. The maximum 20 dB bandwidth of the hopping channel is 1 MHz. The average time of occupancy on any frequency shall not be greater than 0.4 seconds within a 30 second period.

(iii) Frequency hopping systems in the 2400–2483.5 MHz band shall use at least 15 non-overlapping channels. The average time of occupancy on any channel shall not be greater than 0.4 seconds within a period of 0.4 seconds multiplied by the number of hopping channels employed. Frequency hopping systems which use fewer than 75 hopping frequencies may employ intelligent hopping techniques to avoid interference to other transmissions. Frequency hopping systems may avoid or suppress transmissions on a particular hopping frequency provided that a minimum of 15 non-overlapping channels are used.

(2) Systems using digital modulation techniques may operate in the 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz bands. The minimum 6 dB bandwidth shall be at least 500 kHz.

(b) * * *

(1) For frequency hopping systems in the 2400–2483.5 MHz band employing at least 75 hopping channels, and all frequency hopping systems in the 5725–5850 MHz band: 1 Watt. For all other frequency hopping systems in the 2400–2483.5 band: 0.125 Watt.

* * * * *

(3) For systems using digital modulation in the 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz bands: 1 Watt.

* * * * *

(c) In any 100 kHz bandwidth outside the frequency band in which the spread spectrum or digitally modulated

[27] See 47 CFR 15.247(a)(1)(iii). The rules allow frequency hopping systems to use as few as fifteen hopping channels provided the total span of hopping channels is at least 75 MHz. These systems are not required to incorporate adaptive hopping techniques.

[28] 47 CFR 15.247(h).

[29] See 5 U.S.C. 801(a)(1)(A).

[30] See 5 U.S.C. 605(b).

intentional radiator is operating, the radio frequency power that is produced by the intentional radiator shall be at least 20 dB below that in the 100 kHz bandwidth within the band that contains the highest level of the desired power, based on either an RF conducted or a radiated measurement. Attenuation below the general limits specified in § 15.209(a) is not required. In addition, radiated emissions which fall in the restricted bands, as defined in § 15.205(a), must also comply with the radiated emission limits specified in § 15.209(a) (see § 15.205(c)).

(d) For digitally modulated systems, the peak power spectral density conducted from the intentional radiator to the antenna shall not be greater than 8 dBm in any 3 kHz band during any time interval of continuous transmission.

* * * * *

(f) For the purposes of this section, hybrid systems are those that employ a combination of both frequency hopping and digital modulation techniques. The frequency hopping operation of the hybrid system, with the direct sequence or digital modulation operation turned off, shall have an average time of occupancy on any frequency not to exceed 0.4 seconds within a time period in seconds equal to the number of hopping frequencies employed multiplied by 0.4. The digital modulation operation of the hybrid system, with the frequency hopping operation turned off, shall comply with the power density requirements of paragraph (d) of this section.

* * * * *

[FR Doc. 02–15951 Filed 6–24–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket Nos. 96–262, 94–1; FCC 02–161]

Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps

AGENCY: Federal Communications Commission.

ACTION: Interpretation.

SUMMARY: This document concludes the cost review proceeding to verify that increases to the subscriber line charge (SLC) cap above $5.00 are appropriate. The SLC is a flat-rated charge imposed by local telephone service providers on end users to recover the interstate-allocated portion of local loop costs. In 2000, the Commission adopted a schedule to reduce the implicit subsidies in access rates while gradually increasing the cap on the SLC. The Commission stated that it would conduct a cost review proceeding prior to the scheduled cap increases above $5.00. Based on the record before us, we conclude that the increases are appropriate—and indeed necessary—to fulfill the Commission's access charge reform objectives. Therefore, the SLC cap will increase as scheduled in the Commission's rules, to $6.00 on July 1, 2002, and to $6.50 on July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530, or via the Internet at *jmckee@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket Nos. 96–262 and 94–1 released on June 5, 2002. The full text of this document is available on the Commission's website in the Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

Background

In the May 2000 *CALLS Order,* the Commission adopted comprehensive interstate access charge and universal service reforms for incumbent local exchange carriers (LECs) subject to price cap regulation. Consistent with the goals and principles of the Communications Act, the purpose of these reforms is to promote competition by removing implicit subsidies from access charges, while ensuring affordable and reasonably comparable rates through explicit universal service support. Among other things, the Commission adopted a schedule to reduce the implicit subsidies in access rates while gradually increasing the cap on the subscriber line charge (SLC), a flat-rated charge imposed by LECs on end users to recover the interstate-allocated portion of local loop costs. Under the rules adopted in the *CALLS Order,* the SLC cap for residential and single-line business lines will increase to $6.00 on July 1, 2002, and to $6.50 on July 1, 2003. To verify that the increases above the current $5.00 cap are appropriate, the Commission stated that it would conduct a cost review proceeding prior to any scheduled increases above this cap to examine forward-looking cost information associated with the provision of retail voice-grade access to the public switched telephone network. The Commission subsequently concluded that, if the cost review proceeding verified that increases were appropriate for price cap carriers, then the same increases were appropriate for carriers subject to rate-of-return regulation because these carriers generally have higher costs than price cap carriers.

Under the Communications Act, the Commission has a statutory duty to regulate the interstate rates of common carriers, including the interstate access rates charged by incumbent LECs. In performing that duty, the Commission is required to balance the Communications Act's goals of promoting competition and preserving and advancing universal service. More specifically, the Communications Act directs us to convert implicit subsidies, such as those found in access charges, into explicit support, while simultaneously promoting the goals of affordability and reasonable comparability of rates throughout the nation. To promote economically efficient competition and to avoid cross-subsidization, the Commission has recognized that, to the extent possible, LECs should recover costs of interstate access in the same way that they are incurred. Thus, traffic-sensitive costs should be recovered through corresponding per-minute access rates. Similarly, non-traffic-sensitive costs, such as loop costs, should be recovered through fixed, flat-rated fees.

To address the affordability concerns of universal service, however, the Commission has limited the amount of interstate costs that LECs can recover directly from residential and business customers through the flat-rated SLC. Specifically, the SLC is subject to a cap that, particularly for residential customers, is often too low to enable the LECs to recover the entire interstate-allocated cost of the local loop. The remaining loop costs that LECs cannot recover from the SLC are recovered through charges imposed on interexchange carriers (IXCs), which pass these charges on to their customers. Thus, long-distance customers subsidize the rates that LECs charge to residential and single-line business end users. In addition to the inefficient implicit subsidies in the rate structure, LECs historically have averaged their SLCs over relatively large geographic areas. Geographic rate averaging means that customers in low-cost areas are subsidizing the rates of customers in high-cost areas. To the extent the SLC cap is set below cost, it inhibits a LEC's ability to deaverage its SLC rates, thus maintaining implicit subsidies running from low-cost areas to high-cost areas.

To reduce the inefficient implicit subsidies caused by the residential and single-line business SLC cap, the Commission in the *CALLS Order* implemented a schedule of increases to this cap, with corresponding decreases to the charges imposed on IXCs. The cap was $3.50 prior to the *CALLS Order,* and was raised to $4.35 on July 1, 2000, and to $5.00 on July 1, 2001. The cap is scheduled to increase to $6.00 on July 1, 2002 and to $6.50 on July 1, 2003. In setting these SLC caps, the Commission balanced the goals of removing implicit subsidies and ensuring the affordability of basic telephone service for residential and single-line business customers, and concluded that gradual increases in the SLC could bring substantial benefits that outweigh any affordability concerns. Specifically, the Commission found that increasing the SLC cap would:

- Remove inefficient implicit subsidies in the access charge rate structure by more closely aligning cost recovery with cost causation;
- Remove inefficient implicit subsidies inherent in geographic rate averaging by allowing LECs greater flexibility to deaverage SLCs;
- Promote competition by sending appropriate pricing signals through deaveraged SLCs that more closely reflect the actual costs of providing service; and
- Not jeopardize affordable local telephone rates for qualifying low-income consumers, due to additional Lifeline support available to cover any SLC rate increases resulting from the increased cap.

As stated in the *CALLS Order,* the Commission initiated the current proceeding to verify that it is appropriate to increase the residential and single-line business SLC caps above $5.00. By Public Notice issued on September 17, 2001, the Commission initiated a proceeding to verify that increases to the residential and single-line business SLC cap above $5.00 are appropriate. Price cap carriers submitted their cost studies on November 16, 2001. Specifically, Aliant, Cincinnati Bell, Iowa Telecom, and Sprint based their cost studies on the Synthesis Model used by the Commission to determine costs for universal service support purposes. The remaining price cap LECs, BellSouth, Citizens, Qwest, SBC, Valor, and Verizon, used other cost models, some of which are proprietary. Parties submitted comments on these studies on January 24, 2002. In addition to filing comments opposing the SLC cap increases, the National Association of State Utility Consumer Advocates (NASUCA) filed a cost study of its own. Parties submitted reply comments on February 14, 2002.

Discussion

The purpose of the instant proceeding is to verify that increases to the SLC cap above $5.00 are warranted. Specifically, pursuant to the Commission's plan for allowing SLCs to increase gradually, the SLC cap for residential and single-line business lines is scheduled to increase to $6.00 on July 1, 2002, and to $6.50 on July 1, 2003, provided that ''such increases are appropriate and reflect higher costs where they are to be applied.'' *CALLS Order,* 65 FR 38684 (June 21, 2000).

To verify that the scheduled SLC cap increases are appropriate, the Commission stated that it would examine the price cap carriers' forward-looking costs of providing retail voice grade access to the public switched telephone network. Forward-looking costs are the costs that an efficient carrier would incur to provide service in a competitive market. Most markets today are not yet competitive and the incumbent LEC is the dominant provider of service for residential and single-line business customers. Even in a fully competitive environment, however, there may be a continued need for a SLC cap because the cost of providing service in certain rural and insular regions is high and will likely continue to be high for the foreseeable future. By examining forward-looking costs in this proceeding, the Commission can verify that increases to the SLC cap would be appropriate if the market were, in fact, competitive. Thus, by evaluating the SLC cap in light of forward-looking costs, we can ensure that the upper limit placed on consumer rates reflects competitive market conditions even though full competition has not yet arrived.

Applying this analysis, we conclude that the scheduled SLC cap increases are appropriate if the record demonstrates that efficient carriers in a competitive market would have a substantial number of lines with forward-looking costs that exceed the current $5.00 SLC cap and the ultimate $6.50 SLC cap. A substantial number of lines with costs that exceed the current $5.00 cap shows that, at a level where affordability is not yet a paramount concern, the current cap is impeding the efficient recovery of costs in a meaningful way. A substantial number of lines with costs that exceed the ultimate $6.50 cap shows that, at a level where affordability becomes a paramount concern, the ultimate cap serves a legitimate purpose by protecting consumers from potentially unaffordable rates. Determining what constitutes a ''substantial'' number of lines, however, is not an exact science. In making this determination we rely on our expertise in regulating interstate access charges, as well as our discretion in balancing the removal of implicit subsidies with ensuring affordability. We conclude on the record before us—where the most conservative estimate shows at least 27 million non-rural/33 million total residential and single-line business price cap lines with costs above $5.00, and at least 14 million non-rural/20 million total residential and single-line business price cap lines with costs above $6.50—that raising the cap is necessary to enable SLC deaveraging as discussed below. Therefore, we need not determine precisely what figure might require us to override the planned increase of the SLC cap.

As a result of the Commission's prior decisions, there is currently one primary residential and single-line business SLC cap that applies to all carriers. We determine that it is appropriate to retain a single national cap to apply to all incumbent LECs. One cap, as opposed to multiple caps for carriers or regions, promotes reasonable comparability of rates in different geographic areas, and is simpler to administer. In addition, although the SLC cap will increase, SLCs will be constrained by price cap carriers' CMT (common line, marketing and transport interconnection charge) revenues, and by rate-of-return carriers' costs. We therefore decline to adopt the Florida Commission's suggestion that ''the SLC be made state-specific for each company'' so carriers cannot average rates across their regions. Maintaining one national SLC cap preserves carriers' existing flexibility to average rates across their regions. Eliminating this flexibility would force carriers to recover more of their common line costs through the inefficient subsidy of PICC and CCL charges. Moreover, as discussed above, the Commission in the *CALLS Order* has provided LECs the flexibility to deaverage their SLCs within study areas once certain conditions are met. Raising the SLC cap will provide LECs with a greater ability to take advantage of study area deaveraging. To the extent carriers do not avail themselves of the opportunity to deaverage their SLCs after the cap reaches $6.50, however, the Commission will have the opportunity to revisit this issue if necessary.

Our decision in this proceeding affects both the price cap carriers regulated under our rules adopted in the *CALLS Order,* and rate-of-return carriers. Although the access charge reforms, including the SLC cap

increases, adopted in the *CALLS Order* applied only to price cap carriers, in 2001 the Commission implemented a separate access charge reform plan for rate-of-return carriers, which serve roughly 10.9 million lines. Pursuant to the Commission's decision in the *Rate-of-Return Access Charge Reform Order,* the residential and single-line business SLC cap for rate-of-return carriers is synchronized with the *CALLS Order* schedule for increases above $5.00, pending the findings of the Commission in the price cap carrier SLC review proceeding. In the *Rate-of-Return Access Charge Reform Order,* the Commission stated that, if SLC cap increases are justified for price cap carriers, then SLC cap increases also are justified for rate-of-return carriers because rate-of-return carriers generally have higher common line costs than price cap carriers. The Rural Task Force has documented these higher costs, finding that rate-of-return carriers in rural areas have high loop costs because of a lack of economies of scale and density, and total investment in plant per loop is substantially higher for rural carriers than for non-rural carriers. Furthermore, parity in SLC cap levels among price cap and rate-of-return carriers is appropriate to ensure reasonable comparability of rates in urban and rural areas.

After considering the various submissions on the record, we find that the record demonstrates that a substantial number of lines have forward-looking costs above the current $5.00 cap and the ultimate $6.50 cap. The cost studies of the price cap LECs provide results showing the greatest number of lines with costs above $5.00 and $6.50 respectively, but we are disinclined to use those results because of the criticisms of these studies raised by commenters in this proceeding. Proceeding cautiously, and assuming for the sake of argument that these criticisms are valid, we find that NASUCA's more conservative cost study still shows that there are a substantial number of lines above the SLC caps. Commission staff were able to verify NASUCA's results using the cost model and NASUCA's assumptions. In addition, we observe that certain parties that support raising the SLC cap also relied on the Synthesis Model. Although some of these parties modified various parameters of the model, they generally agreed that the model provided a reasonable estimate of forward-looking costs for the limited purpose of this proceeding. The Commission has cautioned parties against using the results of the Synthesis Model to set rates, however, and we emphasize that we are not doing so in this proceeding. Instead, we are relying on NASUCA's cost study because it is the most conservative one in our record addressing the question of whether the proposed SLC cap increases, applicable to all carriers on a national basis, are appropriate.

NASUCA's cost study, although conservative, still amply demonstrates that a substantial number of residential and single-line business lines have forward-looking costs above the current $5.00 SLC cap, and above the fully phased-in $6.50 SLC cap. Specifically, NASUCA's analysis shows that at least 27 million non-rural price cap lines have forward-looking costs above $5.00, and at least 14 million non-rural price cap lines have forward-looking costs above $6.50. The actual number of lines with forward-looking costs above the $5.00 and $6.50 caps presumably is even higher because NASUCA examined the results of only 80 study areas in the Synthesis Model, including only non-rural study areas served by price cap carriers. NASUCA did not include approximately 6 million lines from price cap carriers' rural study areas, which are likely to have relatively high costs. Thus, NASUCA's study is conservative not only as a result of its reliance on the Synthesis Model, which was not intended to be used for ratemaking purposes, but also as a result of its exclusion of high-cost study areas, which introduces a downward bias to its cost estimates. NASUCA's analysis shows that lines with forward-looking costs above the caps are geographically dispersed and exist in every state. Given the substantial number of geographically-dispersed lines above the caps, we find that the scheduled increases in the SLC cap are appropriate.

In the *CALLS Order,* the Commission rejected commenters' request to combine the multi-line business SLC and the multi-line business PICC, but agreed to revisit the issue during the residential and single-line business SLC cap cost review proceeding. After weighing the competing goals of removing implicit subsidies and maintaining affordable rates for consumers, we determine that it is not appropriate to combine the multi-line business SLC and PICC charged by price cap LECs at this time.

In declining commenters' suggestions to combine the multi-line business SLC and PICC, we observe that the multi-line business PICC will be reduced or eliminated for most carriers when the residential and single-line business SLC cap reaches $6.50. If necessary, we will examine ways to eliminate the multi-line business PICC, as well as another charge containing implicit subsidies, the CCL charge, after the residential and single-line business SLC reaches the cap of $6.50 in July 2003.

In addition, we are concerned with the affordability issues raised by increasing the multi-line business SLC above the current $9.20 cap. Some carriers that operate in high-cost areas still recover their loop costs by charging IXCs up to the full amount of the multi-line business PICC cap of $4.31. The IXCs, in turn, recover the PICC from all of their multi-line business customers, effectively spreading the PICC across a much larger group and thereby lowering the amount recovered from each customer. If we were to combine the charges at this time, some multi-line business customers in high-cost areas would be subject to SLCs at or near $13.51 per line per month. Increasing to this level the SLCs of these customers, who are not eligible for Lifeline support, would raise affordability concerns. Additionally, we are disinclined to recover the subsidy represented by the multi-line business PICC entirely from the narrow class of high-cost multi-line business customers, rather than spreading its effect more broadly by continuing to recover it from IXCs, which have considerable flexibility in how they recover this cost.

At paragraph 154 of the *CALLS Order,* the Commission adopted an option that allows rural price cap LECs some relief from achieving the required switched access usage charge reductions solely through rate decreases. Specifically, non-Bell Operating Company price cap carriers that have at least 20 percent of total holding company lines operated by rural telephone companies may elect to shift to the common line basket the switched access usage charges necessary to yield those filing entities' proportionate share of the total reduction in switched access usage charge rates. These carriers would include these amounts in the CMT revenue requirement, and, to the extent they cannot recover all of the revenue requirement within a filing entity, they may increase their multi-line business PICCs and multi-line business SLCs in other filing entities within the same holding company, up to the amount of the applicable SLC and PICC cap. The Commission stated that this mechanism was to be reviewed in the instant cost proceeding to determine whether retaining this exception or transferring the additional switched access reduction amounts to the CMT basket is warranted.

We note that no party has raised any objection to retaining the rural price cap exception and we are not aware of any problems created by the exception. We believe that the rationale for adopting it in the *CALLS Order* remains, i.e., it is in the public interest to allow rural price cap LECs some ability to recover the switched access usage charge reductions through shifting them to the CMT basket. We therefore retain the exception.

Accordingly, *it is ordered* that, pursuant to sections 1, 4(i) and (j), 201–205, 218–222, 254, 303(r), and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218–222, 254, 303(r), and 403, this Order is *hereby adopted.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–15949 Filed 6–24–02; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 67, No. 122
Tuesday, June 25, 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 39

[Docket No. 2000–NM–297–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; and Model A300 B4–601, B4–603, B4–620, B4–605R, B4–622R, and F4–605R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises a previously proposed airworthiness directive (AD) applicable to certain Airbus Model A300 B2 and B4 series airplanes and Model A300 B4–601, B4–603, B4–620, B4–605R, B4–622R, and F4–605R airplanes. The previously proposed AD would have revised an existing AD to remove one model from the applicability. That AD currently requires a one-time inspection for cracking of the gantry lower flanges in the main landing gear (MLG) bay area; and repair, if necessary. This new action, which proposes to supersede the existing AD, would remove the one model from the applicability. For certain airplanes, it would retain the one-time inspection for cracking of the gantry lower flanges and repair, if necessary. For other airplanes, this new action would add repetitive inspections of the gantry lower flanges; repair, if necessary; and reinforcement of the left-hand and right-hand gantry. The actions specified by this new proposed AD are intended to detect and correct cracking of the gantry lower flanges in the MLG bay area, which could result in decompression of the airplane.

DATES: Comments must be received by July 30, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–297–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–297–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–297–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–297–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to Airbus Model A300 B2 and B4 series airplanes; and Model A300 B4–601, B4–603, B4–620, B4–605R, B4–622R, and F4–605R airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 10, 2001 (66 FR 1917). That NPRM proposed to revise AD 98–13–37, amendment 39–10628 (63 FR 34589, June 25, 1998), which is applicable to certain Airbus Model A300 and all Model A300–600 series airplanes. (See the ''Explanation of Airplane Model Designation'' below.) The NPRM proposed to continue to require a one-time inspection for cracking of the gantry lower flanges in the main landing gear (MLG) bay area, and repair, if necessary, but would have removed Model A300 F4–622R airplanes from the applicability. Removing Model A300 F4–622R airplanes from the proposed applicability was based on information received from the Direction Générale de l'Aviation Civile (DGAC), the French civil airworthiness authority. This

information indicated that Model A300 F4–622R airplanes are not subject to cracking of the gantry lower flanges in the MLG bay area.

Explanation of Airplane Model Designation

The applicability of AD 98–13–37 includes the following airplane models: A300 B4–601, B4–603, B4–620, B4–605R, B4–622R, F4–605R, and F4–622R. However, since these airplanes are commonly referred to as ''Model A300–600 series airplanes,'' that model designation was specified in the applicability of that AD. Since the issuance of that AD, the FAA has determined that these airplanes should be designated exactly as they appear on the type certificate data sheet. Therefore, the applicability of the previously proposed AD, as well as that of this new NPRM, designates each specific model (excluding Model F4–622R airplanes, which are purposely removed) without referring to the common name of the airplane.

Actions Since Issuance of Previous Proposal

Since the issuance of the previous proposal, the FAA has been advised that Airbus has issued Service Bulletin A300–53–6128, dated March 5, 2001, for Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, B4–622R, and F4–605R airplanes. The service bulletin describes procedures for repetitive inspections for cracks of the lower flanges of gantries 3, 4, and 5 on the left-hand and right-hand sides; repair of any cracks detected; and reinforcement of the left-hand and right-hand gantries. The service bulletin also provides a sequence of steps for accomplishing threshold and repetitive inspections, repair, and reinforcement in the Synoptic Chart included as Figure 2, Sheets 1 through 5; the Synoptic Chart also indicates the interval between certain steps.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repairs, this proposal would require those repairs to be accomplished per a method approved by the FAA.

FAA's Determination

The FAA has determined that—for Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, B4–622R, and F4–605R airplanes—the following actions must be accomplished in accordance with Airbus Service Bulletin A300–53–6128, dated March 5, 2001:

- Initial and repetitive inspections for cracking of the gantry lower flanges in the main landing gear bay area.
- Repairs, if necessary.
- Reinforcement of the left-hand and right-hand gantries.

Conclusion

Since these requirements expand the scope of the originally proposed rule, the FAA has determined that it is necessary to issue this supplemental notice of proposed rulemaking which proposes to supersede the existing AD rather than to revise it. Issuance of this supplemental NPRM provides opportunity for public comment on the proposed repetitive inspections.

Cost Impact

One-Time Inspection

The number of airplanes affected by AD 98–13–37 was estimated to be 67. The one-time inspection required by that AD was estimated to take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of AD 98–13–37 on U.S. operators was estimated to be $16,080, or $240 per airplane.

The FAA currently estimates that 43 Model A300 B2 and B4 series airplanes of U.S. registry would be affected by the one-time inspection required by AD 98–13–37 and proposed to be retained in this supplemental NPRM. We also estimate that all affected U.S. operators have previously accomplished these requirements, so that the future cost impact of this requirement is minimal.

Repetitive Inspections

The FAA estimates that 78 Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622R, and F4–605R airplanes of U.S. registry would be affected by the proposed repetitive inspections, that it would take approximately 12 work hours per airplane to accomplish each inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed repetitive inspections on those U.S. operators is estimated to be $56,160, or $720 per airplane, per inspection cycle.

The cost impact figures for the repetitive inspections are based on assumptions that no operator has yet accomplished those repetitive inspections and that no operator would accomplish those repetitive inspections in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10628 (63 FR 34589, June 25, 1998) and by adding a new airworthiness directive to read as follows:

Airbus: Docket 2000–NM–297–AD. Supersedes AD 98–13–37, Amendment 39–10628.

Applicability: Model A300 B2 and B4 series airplanes on which Airbus

Modification 3474 has been accomplished; and Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622R, and F4–605R airplanes on which Airbus Modification 12169 has not been incorporated in production; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the gantry lower flanges in the main landing gear (MLG) bay area, which could result in decompression of the airplane, accomplish the following:

One-Time Inspection and Corrective Action, if Needed

(a) For Model A300 B2 and B4 series airplanes: Prior to the accumulation of 16,300 total flight cycles, or within 500 flight cycles after July 30, 1998 (the effective date of AD 98–13–37, amendment 39–10628), whichever occurs later, perform a one-time ultrasonic inspection for cracking of the gantry lower flanges in the MLG bay area, in accordance with Airbus All Operators Telex (AOT) 53–11, dated October 13, 1997.

(1) If any cracking is detected, prior to further flight, repair in accordance with the AOT.

(2) If no cracking is detected, no further action is required by this AD.

Repetitive Inspections and Corrective Action, if Needed

(b) For Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622R, and F4–605R airplanes: Perform the requirements of paragraphs (b)(1) and (b)(2) of this AD, in accordance with Airbus Service Bulletin A300–53–6128, dated March 5, 2001.

(1) Perform initial and repetitive ultrasonic inspections or high-frequency eddy current (HFEC) inspections for cracks of the lower flanges of gantries 3, 4, and 5 between fuselage frames FR47 and FR54, in accordance with the thresholds and the Accomplishment Instructions, including the Synoptic Chart contained in Figure 2, sheets 1 through 5 inclusive, of the service bulletin.

(2) Perform repairs and reinforcements, in accordance with the thresholds and the Accomplishment Instructions, including the Synoptic Chart contained in Figure 2, sheets 1 through 5 inclusive, of the service bulletin, except as specified in paragraph (b)(3) of this AD.

(3) If a new crack is found during any inspection required by paragraph (b)(1) or (b)(2) of this AD and the Synoptic Chart contained in Figure 2, sheets 1 through 5 inclusive, of the service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 1997–372–236(B) R2, dated April 18, 2001, and 2001–091(B), dated March 21, 2001.

Issued in Renton, Washington, on June 18, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–15912 Filed 6–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–02–042]

RIN 2115–AA97

Security Zone, San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create moving and fixed security zones 50 yards around all cruise ships entering, departing, moored or anchored in the Port of San Juan, Puerto Rico. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port of San Juan or his designated representative.

DATES: Comments and related material must reach the Docket Management Facility on or before August 26, 2002.

ADDRESSES: You may mail comments and related material to Commanding Officer, Marine Safety Office San Juan, P.O. Box 71526, San Juan, Puerto Rico 00936. You may also deliver them in person to Commanding Officer, Marine Safety Office San Juan, Rodriguez and Del Valle Building, 4th Floor, Calle San Martin, Road #2, Guaynabo, Puerto Rico, 00968. The U.S. Coast Guard Marine Safety Office 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 this docket and will be available for inspection or copying at the USCG Marine Safety Office between the hours of 7 a.m. and 3:30 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Lieutenant Chip Lopez at Coast Guard Marine Safety Office San Juan, Puerto Rico, at (787) 706–2444.

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 (CGD07–02–042), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one by writing to the Commanding Officer U.S. Coast Guard Marine Safety Office 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

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of San Juan, Puerto Rico, against cruise ships entering, departing and moored within the Port of San Juan. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely.

The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways. In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard is establishing temporary security zones around all cruise ships entering, departing and moored within the Port of San Juan. We previously published a temporary final rule entitled ''Security Zone; San Juan, PR'' in the **Federal Register** on January 17, 2002 (67 FR 2330). That temporary final rule contained similar provisions as those in this notice of proposed rulemaking.

Discussion of Proposed Rule

The security zone for a cruise ship entering the Port of San Juan will be activated when the cruise ship is one mile north of the number 3 buoy, at approximate position 18°28.1′ N, 66°07.6′ W. The zone for a vessel would be deactivated when the vessel passes this buoy on its departure from the Port of San Juan. The security zones encompass all waters 50 yards around a cruise ship.

Persons and vessels are prohibited from entering into or transiting through a security zone unless authorized by the Captain of the Port (CTOP), or his designated representative. Each person and vessel in a security zone must obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the Captain of the Port. The Captain of the Port will notify the public of these security zones through Marine Safety Information Bulletins via facsimile and the Marine Safety Office San Juan Web site at *http://www.msocaribbean.com.*

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because other vessels will be able to safely navigate around the zones while in place and persons may be authorized to enter or transit the zone with the permission of the Captain of the Port.

Small Entities

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

This proposed rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the Port of San Juan when a cruise ship is entering, departing, moored or anchored in the Port of San Juan. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because other vessels will be able to safely navigate around the zones while in place and persons may be authorized to enter or transit the zone with the permission of the Captain of the Port. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Commander Robert Lefevers at Coast Guard Marine Safety Office San Juan, Puerto Rico, (787) 706–2444.

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

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 proposed 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 regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because it is establishing safety zones. 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 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 § 165.758 to read as follows:

§ 165.758 Security Zone; San Juan, Puerto Rico.

(a) *Location.* Temporary moving and fixed security zones are established with a 50-yard radius surrounding all cruise ships entering, departing, moored or anchored in the Port of San Juan, Puerto Rico. The security zone for a cruise ship entering port is activated when the vessel is one mile north of the #3 buoy, at approximate position 18°28′ 17″ N, 66°07′ 37.5″ W. The security zone for a vessel is deactivated when the vessel passes this buoy on its departure from the port.

(b) *Regulations.* (1) Under general regulations in § 165.33 of this part, entering, anchoring, mooring or transiting in these zones is prohibited unless authorized by the Coast Guard Captain of the Port of San Juan.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at via the Greater Antilles Section Operations Center at (787) 289–2041 or via VHF radio on Channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(3) The Marine Safety Office San Juan will notify the maritime community of periods during which these security zones will be in effect by providing advance notice of scheduled arrivals and departures of cruise ships via a broadcast notice to mariners.

(c) *Definition.* As used in this section, *cruise ship* means a passenger vessel greater than 100 feet in length that is authorized to carry more than 12 passengers for hire, except for a ferry.

(d) *Authority.* In addition to 33 U.S.C 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: June 14, 2002.

J.A. Servidio,

Commander, Coast Guard, Captain of the Port, San Juan.

[FR Doc. 02–15907 Filed 6–24–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA CA261–0343b; FRL–7220–5]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from metal parts and products coating operations. We are proposing to approve a local rule regulating these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 25, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814; and,

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: This proposal concerns SJVUAPCD Rule 4603—Surface Coating of Metal Parts and Products. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial.

However, if we receive adverse comments, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 9, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 02–15872 Filed 6–24–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 654

[Docket No. 020606141–2141–01; I.D. 031402C]

RIN 0648–AN10

Stone Crab Fishery of the Gulf of Mexico; Amendment 7

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 to implement Amendment 7 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP). This proposed rule would establish a Federal trap limitation program for the commercial stone crab fishery in the exclusive economic zone (EEZ) off Florida's west coast, including the area off Monroe County, FL (i.e., the management area) that would complement the stone crab trap limitation program implemented by the Florida Fish and Wildlife Conservation Commission (FFWCC). The Federal program would recognize the FFWCC's license, trap certificates, and trap tags for use in the EEZ in lieu of a Federal permit, but would not require them in addition to a Federal permit. Under the Federal program, a person who could meet the Federal eligibility requirements and who does not possess the license and trap certificates required by the FFWCC would be issued a Federal vessel permit, a trap certificate, and trap tags valid in the EEZ only. In addition, Amendment 7 would revise the Protocol and Procedure for an Enhanced Cooperative Management System (Protocol) consistent with Florida's constitutional revisions that transferred authority for implementation of fishery-related rules from the Governor and Cabinet to the FFWCC. The intended effects are to establish a Federal program that would complement and enhance the effectiveness of the FFWCC's trap limitation program and, thereby, help to reduce overcapitalization in the stone crab fishery.

DATES: Written comments must be received no later than 4:30 p.m., eastern daylight savings time, on August 9, 2002.

ADDRESSES: Written comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to Robert Sadler, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for copies of Amendment 7, which includes a regulatory impact review and an environmental assessment, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; telephone: 813–228–2815; fax: 813–225–7015; e-mail: *gulfcouncil@gulfcouncil.org.*

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

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 654.

Background

Fishery information available since the early 1980's indicates that continued expansion of the stone crab fishery in terms of area fished, and numbers of participants and traps has reached a level where the fishery has more participants and traps than necessary to harvest optimum yield. This excessive growth has reduced efficiency in the fishery and failed to increase annual harvest since the early 1990's. Since moratoriums were first implemented (60 FR 13918, March 15, 1995; 63 FR 44595, August 20, 1998), neither Florida nor NMFS has issued new permits for this fishery. Amendment 7 represents a continuation of cooperative state/Federal efforts to constrain overcapitalization in the stone crab fishery.

In Amendment 7, the Council has proposed measures that would revise management of the stone crab fishery in the Gulf of Mexico EEZ waters off west Florida including Monroe County (i.e., the management area). This proposed rule would establish regulations for the management area that would complement the stone crab trap limitation program recently adopted by the FFWCC. The Council determined that such a complementary Federal program was necessary to enhance the effectiveness of the FFWCC's program and, thus, help to reduce overcapitalization in the stone crab fishery.

The FFWCC Trap Limitation Program

Florida adopted its trap limitation program on June 26, 2000. Its governing agency, the FFWCC, expects to fully implement this program by October 1, 2002, the beginning of the 2002/2003 fishing season. Although the number of fishers has been stabilized by state and Federal permit moratoriums, the number of traps deployed in the fishery in the past decade has doubled. Florida's program endeavors to halt the fishery's escalating effort and overcapitalization trend by halving the number of traps deployed from the current estimate of about 1.3 million to 0.6 million within a projected 30-year period. The expected benefits are increased yield per trap, decreased conflicts between participants in the stone crab and shrimp trawler fisheries, minimized damage to hard bottoms and seagrass beds, and fewer trap ropes and buoys to impede navigation.

Amendment 7 Proposals

To align Federal management of the stone crab fishery with the FFWCC trap limitation program, the Council has proposed the following nine changes to the FMP in Amendment 7: (1) Recognize, but not require, Florida's stone crab licenses and trap tags for vessels operating in the management area; (2) establish a Federal program to issue non-transferable (to other persons) vessel permits, trap certificates, and trap tags for EEZ use only; (3) provide opportunity to apply for the proposed

Federal vessel permit to those who could meet the qualifying criteria but could not or chose not to obtain the stone crab vessel license or tags issued by the FFWCC; (4) allow participants up to 90 days following the effective date of the final rule implementing Amendment 7 to apply for Federal permits and tags; (5) determine the number of Federal trap tags to be issued to qualifying persons by dividing his/her highest seasonal landings of stone crab claws during one of three fishing seasons (1995/96, 1996/97, or 1997/1998) by 5 lb (2.27 kg); (6) charge a fee for the issuance of Federal trap tags and vessel permits and their annual renewals; (7) establish a Federal appeals process for those denied a Federal permit; (8) revise the Protocol to reflect revisions to Florida's Constitution; and (9) replace FMP management objective 3 with a new objective: Take regulatory action to increase catch per unit effort (CPUE) and reduce overcapitalization in terms of gear deployed in the fishery.

Proposed Federal Trap Limitation Program

This proposed rule would establish a Federal stone crab trap limitation program in the management area that would complement the FFWCC program. The Federal program would issue to qualified applicants Federal commercial vessel permits, trap certificates, and annual trap tags. These would not be required for persons or vessels operating in the management area that are in compliance with the FFWCC trap limitation program.

Commercial Vessel Permit Requirement

Beginning October 1, 2002, a vessel not in compliance with the FFWCC stone crab trap limitation program would have to possess on board a Federal vessel permit for stone crab to be authorized to possess or use a stone crab trap, possess more than 1 gallon (4.5 L) of stone crab claws, or sell stone crab claws in or from the management area.

Eligibility Requirements for a Federal Commercial Vessel Permit

To qualify for the Federal permit, the owner of a vessel would have to provide to the Administrator, Southeast Region, NMFS, (RA) documentation substantiating that he/she landed a minimum of 300 lb (136 kg) of stone crab claws harvested from the management area or Florida's state waters during at least one of the three specified stone crab fishing seasons (October 15 through May 15): 1995/1996, 1996/1997, or 1997/1998. An applicant who has a valid FFWCC stone crab trap certificate or a Florida saltwater products license (SPL) that is currently suspended or revoked would not be eligible for the Federal vessel permit.

Documentation of Eligibility for a Commercial Vessel Permit

To determine if an applicant qualifies under the 300–lb (136–kg) minimum qualifying landings requirement, the RA would accept only documentation for stone crab claws landed in Florida that can be verified through the Florida trip ticket system. Such landings would have to be associated with a single Florida SPL. Landings of stone crab harvested from the management area or Florida's state waters, but landed in a state other than Florida, may be documented by dealer records that clearly specify the species landed (i.e., stone crab), dates and amounts of stone crab landings, and the vessel's name and official number. Such dealer records must be accompanied by a sworn affidavit by the dealer confirming the accuracy and authenticity of the records. The authenticity and accuracy of all submitted documents are subject to NMFS' verification by comparison with state, Federal, or other pertinent records and information. An applicant submitting false documentation could be disqualified from participating in the fishery or subjected to appropriate legal penalties.

Application for a Commercial Vessel Permit

Applications for a Federal commercial vessel permit for stone crab would be available from the RA. An applicant (e.g., a vessel owner, or an eligible person from the owning corporation or partnership) would be required to submit to the RA an application which would include the name and official number of the vessel; a copy of the vessel's valid United States Coast Guard (USCG) certificate of documentation or state registration certificate; information identifying the owner; the required documentation of eligibility; desired color code for identifying the vessel and trap buoys; number and dimensions of traps expected to be deployed; and any other information necessary for the issuance and administration of the permit as specified on the application form.

Such applications would have to be postmarked or hand-delivered to the RA no later than 90 days after the effective date of the final rule implementing Amendment 7. The RA would not issue a vessel permit to an applicant who failed to meet this deadline. If an application is incomplete, the RA would notify the applicant of the deficiency. If an applicant fails to correct and return it to the RA within 30 days, it would be considered abandoned. Applicants not meeting the eligibility requirements would be notified by the RA within 30 days of receipt of their application.

Appeal Process for Commercial Vessel Permit Denial

An applicant who complied with the application procedures and was initially denied a Federal stone crab vessel permit, would be provided an opportunity to appeal that decision to the RA. After receiving a denial, the applicant would be afforded no more than 60 days to deliver (postmarked or hand-delivered) his/her appeal to the RA. An appeal would have to be submitted in writing, state the reasons the denial should be reversed or modified, and include copies of pertinent landing records or other reliable documentation germane to resolving the issue. The RA would appoint one or more appellate officers to review the appeal and make recommendations to deny the appeal or issue a decision based on its merits. The recommendations of the appellate officers could be affirmed, reversed, modified, or remanded by the RA. Under section 402(b)(1)(F) of the Magnuson-Stevens Act, such a written appeal would authorize the RA to make pertinent and confidential landings information available to the appellate officer(s).

If an appellant requests a hearing, the RA would determine whether such a hearing is necessary and, if so, notify the appellant of the place and date of the hearing. The appellant would be allowed 30 days after the notification date to provide supplementary documentary evidence to support the appeal.

Duration, Renewal, Transferability, and Fees for a Commercial Vessel Permit

A commercial vessel permit would be issued on an annual basis and be valid for the period specified on it unless it is revoked, suspended, or modified, or the vessel is sold. Approximately 2 months prior to the permit's expiration date, the RA would mail a renewal notification to the vessel owner. A vessel owner not receiving such a notification 45 days prior to the permit's expiration date would be obliged to contact the RA about its renewal. The RA would not renew a permit if an application for renewal is not received within 1 year of the permit's expiration date or if the permit has been revoked.

A commercial vessel permit would not be transferable or assignable to

another vessel, except to another (e.g., replacement) vessel owned by the same entity. Neither could it or a trap certificate be leased.

NMFS would charge a fee for each permit application processed (i.e., initial issuance, renewal, and replacement) and for each annual trap tag. These fees would not exceed the administrative costs calculated in accordance with the procedures in the NOAA Finance Handbook. The appropriate fees would have to accompany each application, request for replacement, or request for trap tags.

Issuance of a Federal Trap Certificate and Annual Trap Tags

The RA would issue a trap certificate and annual trap tags only to persons qualifying for and being issued a Federal commercial vessel permit for stone crab. The number of trap tags to be issued would be based on the applicant's stone crab claw landings documented consistent with the requirements of this proposed rule. The applicant's highest documented landings of stone crab claws (pounds) during any one of three fishing seasons (1995/1996, 1996/1997, or 1997/1998) would be divided by 5 lb (2.27 kg). The 5–lb (2.27–kg) divisor represents the average annual harvest expected per trap when the total number of traps in the fishery is reduced to 600,000, the level that would stabilize the fishery at optimum yield. The Council selected this 5-lb (2.27-kg) level for the first year of implementation to accelerate the achievement of the trap reduction goal. This approach would immediately reduce the number of traps in the management area, authorized under the Federal program, to the projected optimal level.

Vessel and Gear Identification

An owner or operator of a vessel for which a valid Federal commercial vessel permit for stone crab has been issued would have to comply with vessel and gear identification requirements that are standard for most federally managed fisheries in the Gulf of Mexico and South Atlantic. A permitted vessel would be required to display its official number and the color code assigned by the RA. Each stone crab trap authorized under the Federal trap limitation program would be required to have a valid annual trap tag issued by the RA attached. A buoy displaying the vessel's official number and assigned color code would have to be attached to each trap or at the end of each string of traps. Improperly marked traps or buoys would be considered illegal gear and could be disposed of in any appropriate manner by an authorized officer. An owner or operator of a vessel in the management area who is in compliance with the FFWCC stone crab trap limitation program and its vessel and gear marking requirements is exempt from these Federal vessel/gear identification requirements.

Proposed Revision of the Protocol

The FMP protocol and procedure provide for a cooperative state/Federal management program whereby measures constructed under the auspices of the FFWCC can be applied in both state and Federal waters, if appropriate. The appropriateness is based on whether the FFWCC's measures would protect and increase long-term yields, provide fair and equitable opportunity for shareholder participation, be consistent with the FMP and Federal regulations, be considered acceptable by the Gulf Council and for implementation by NMFS, be based on information collected by the FFWCC with necessary NMFS assistance, be presented in written form to the Gulf Council that would include the prescribed information, and be applicable to the management area. The FFWCC also would help with the preparation of the documents necessary for Federal rulemaking. By design, this process prevents adverse impacts on the resources and its user groups in both state and federal waters. Further, it avoids duplication and, thereby, streamlines the rulemaking process to provide a comprehensive and compatible management program for the stone crab fishery both in state and Federal waters.

The Protocol was initially proposed in Amendment 5 to the FMP and its proposed rule (59 FR 55405, November 7, 1994), and approved in a final rule (60 FR 13918, March 15, 1995). The revisions of the Protocol, proposed in Amendment 7, reflect recent changes in Florida's Constitution. Most significantly, the FFWCC is now empowered to act independently in implementing state fishery-related rules without approval from the Governor and Cabinet. In addition, the name of the Florida Marine Fisheries Commission (FMFC) has been changed to FFWCC.

Availability of, and Comments on, Amendment 7

Additional background and rationale for the measures discussed here are contained in Amendment 7, the availability of which was announced in the Federal Register on April 18, 2002 (67 FR 19155). All comments received on Amendment 7 or on this proposed rule, including those relevant to Section 303(b)(6) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), during their respective comment periods will be addressed in the preamble of the final rule.

Classification

At this time, NMFS has not determined that the provisions of Amendment 7 that this proposed rule would implement are consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. In making that final determination, NMFS will take into account the data, views, and comments received during the comment period.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The Magnuson-Stevens Act provides the statutory basis for the rule. The Stone Crab FMP utilizes a cooperative management system with the State of Florida to ensure more effective management of the fishery.

The proposed rule would: recognize, but not require, Florida's stone crab licenses and trap tags for vessels operating in the management area; establish a Federal program to issue non-transferable (except to another vessel owned by the same person or entity) vessel permits, trap certificates, and trap tags for EEZ use only; provide opportunity for persons who could not or chose not to obtain the Florida vessel licence to apply for the Federal vessel permit; and would establish a Federal appeals process for those denied a Federal permit.

Establishing a Federal stone crab trap limitation program in conjunction with the state program will help alleviate the current problem of overcapitalization. It is expected that most of the current participants in the fishery will continue to remain at current levels of landings and income. Due to the non-transferability provision under the Federal program, reduction in the number of traps in the fishery will take place over several years through attrition. Under the state program, trap reduction will occur as trap certificates are transferred, since the number of trap certificates obtained by the purchaser is reduced by a particular percentage each time a transfer takes place. The target level of 600,000 traps is believed to be sufficient to harvest the maximum sustainable yield, but also reduces overcapitalization. Thus, retail prices and operator income are not expected to be negatively affected by the trap reduction, and some savings may be expected to accrue to operators because of lower gear expenses. In addition, the proposed rule is expected to

further enhance state/Federal management efficiencies, including law enforcement.

According to a recent NMFS economics report, the number of fishing craft (vessels and boats) engaged in the stone crab fishery averaged 720 annually for the period 1985 through 1994. These fishing craft were operated by an average of 1,425 persons annually. The fishing craft consisted of vessels (fishing craft greater than 5 net tons) and boats. Averaged annually, 234 vessels were operated by 590 fishermen and 486 boats were operated by 837 fishermen. Of the total number of fishermen, 1034 were full-time participants (deriving 50 percent or more of their incomes from fishing) while 392 were part-time participants. In 1994, participation reached its maximum level at 2,852 fishermen.

Generally, a fish harvesting business is considered a small business if it is independently owned and operated and not dominant in its field operation, and if it has annual receipts not in excess of $3.5 million. Although there are several fleet operations in the stone crab fishery, none of these operations may be considered dominant in the harvesting sector. In this case, the gross receipts criterion may be used to define small business.

Business operations in the stone crab fishery consist solely of small business entities. Support for this conclusion is based on the following facts. The highest ex-vessel gross revenue produced by the fishery in a year was $31.9 million in 1997. Even if we assume all landings were made only by the 234 participating vessels (the average number of vessels for 1985–1994), and, thus, disregard the 486 boats, the average gross revenue would amount to only $136,000 per entity. Thus, even under this restrictive assumption, business operations in the stone crab fishery clearly fit the definition of small business entities.

The number of participants that will apply and qualify for a Federal stone crab vessel permit is impossible to determine with exact certainty. However, it is expected to be very few, if any, for the following reasons. All or almost all stone crab fishermen on Florida's west coast who could qualify for a Federal vessel permit could also qualify for the state's stone crab endorsement. Applicants who cannot meet the landings requirement would be ineligible for a Federal permit. With the low poundage requirement for eligibility (300 pounds in either the 1995/96, 1996/97, or 1997/98 fishing seasons), the loss to these non-qualifiers would be less than $2500 per year, assuming their average annual production was less than the qualifying poundage and $8.25 per pound of stone crab claws (the 2000 average price). Non-qualification for the poundage requirement likely indicates the absence of dependence upon this fishery by these participants. The nature of the state and Federal programs, and the specifics of how the fishery operates, however, indicates that there is little expectation that a participant would apply for the Federal permit and be denied.

Even though no applicants are expected to be denied the Federal permit, on the possibility that such a denial occurs, these ineligible applicants would also have equal opportunity to enter the stone crab fishery through the transfer provisions specified in the Florida program, and access to fishing in the EEZ since participation in the Florida program will allow fishing in the EEZ, provided that previous fishing violations or other pertinent state or Federal laws would not prohibit such transfers and subsequent entry into state or federally managed fisheries. Such entry, however, will require the additional initial purchase costs of the permit, certificates, and tags. The eventual cost of these items is not known, however the development of a market will demonstrate the perceived economic viability of entry into the fishery via purchase. Further, the permits, certificates and tags will constitute saleable assets that should have lasting if not increasing resale value over time.

The state permit appears to be much more desirable because the state program allows more flexibility. Specifically, vessels in the state program may fish in both state and Federal waters whereas Federal permit holders would be restricted to fishing in the EEZ. Given the fact that, currently, about 55 percent of stone crab landings and nearly 75 percent of stone crab trips are taken in state waters, such a restriction would obviously not be desirable from a fisherman's perspective. Further, and even more importantly, state trap certificates are transferable to other entities while Federal permits, trap certificates, and tags are not. As such, the Federal permits and trap certificates would possess no market value whereas state trap certificates should have a positive market value, assuming that a demand for such certificates exists. Finally, in the 16 years during which persons or entities could apply for a Federal permit if they did not qualify for a state permit, no applications were received for the Federal permits. In fact, other than Florida fishermen who, for unknown reasons, qualified but did not apply for the Florida endorsement/tags or who applied but were denied the Florida endorsement/tags (though these fishermen would likely not qualify for the Federal vessel permit either), the only persons or entities that might conceivably apply for Federal permits and trap certificates would be fishermen that caught stone crab in waters off the west coast of Florida, but landed them in another state because they lacked a Florida Saltwater Products License. Though it is not presently possible to discern how many fishermen might fall into this set of circumstances, the number is likely very small because of the long traveling distance to the fishing grounds from other states and the relatively slow speeds at which these vessels travel, both of which would contribute to relatively high operational costs. Further, there is a need to get the product to market as quickly as possible in order to obtain decent market prices, avoid product spoilage, and thus generate reasonable revenues. In other words, such operations are quite unlikely to be profitable and, thus, highly unlikely to occur.

The determination of significant economic impact can be ascertained by examining two criteria, disproportionality and profitability. The disproportionality question is: do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? Although some variation exists between boats and vessels and a few fishermen own more than one fishing craft, all are classified as small entities. Thus, the issue of disproportionality is irrelevant in the present case.

The profitability question is: do the regulations significantly reduce profit for a substantial number of small entities? Most fishing businesses currently engaged in the stone crab fishery are expected to experience no impacts to their profits as a result of this rule, primarily because the vast majority are expected to qualify under and participate in the state program and not become involved with the Federal program. Thus, these entities will not experience any significant and adverse economic impacts as a result of this rule.

However, should a few fishermen actually apply and qualify for the Federal permit, this small group of entities could be significantly and adversely affected. As previously explained, the Federal program has provisions that not only differ from but are likely economically disadvantageous relative to the state of Florida program. For example, revenues and profits earned from landings in state waters would be unavailable to Federal permit holders. Again, the extent of such revenues and profits to non-Florida fishing craft is unknown. Additional costs must be absorbed by the Federal permit holder which consist of the cost of the permit (about $50 per vessel) and trap tags (approximately $1.10 per tag). Under the state program, 1132 persons are expected to qualify for approximately 1.3 million trap certificates, which means that each person would possess approximately 1150 traps, certificates, and trap tags on average. Assuming that those persons qualifying under the Federal program would be similarly situated, the cost of the Federal permit and trap tags would be approximately $1315. Given approximate maximum average annual revenues of $136,000 per entity, these costs alone would represent approximately 1 percent of gross revenues. Since operational costs must be positive and, thus, profits must be less than $136,000 per entity on average, permit and tag costs as a percentage of profits must be even greater than 1 percent. When combined with the potential loss of revenues and profits from landings in state waters, substantial and adverse economic impacts may accrue to a very small number of entities.

As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This proposed rule contains five collection-of-information requirements subject to the PRA. Three of the collection-of-information requirements

are new--documentation of stone crab landings, a commercial vessel permit application, and information to support an appeal of a denial of eligibility for a commercial vessel permit. These collection-of-information requirements have been submitted to OMB for approval. The other two collection-of-information requirements, vessel and gear identification, have been approved by OMB under control numbers 0648-0358 and 0648-0359, respectively. Public reporting burdens for these five collection-of-information requirements are estimated to average 2 hours, 20 minutes, 5 hours, 45 minutes, and 7 minutes per response, respectively, including 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 collection requirements, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 50 CFR Part 654

Fisheries, Fishing.

Dated: June 19, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National; Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 654 is proposed to be amended as follows:

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 654 continues to read as follows:

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

2. In § 654.2, the definition of ''Regional Director'' is removed; a definition of ''Regional Administrator'' is added in alphabetical order; and the definition of ''Stone crab'' is revised to read as follows:

§ 654.2 Definitions.

* * * * *

Regional Administrator (RA) for the purposes of this part, means the Administrator, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, or a designee.

Stone crab means *Menippe mercenaria, M. adina*, or their interbreeding hybrids, or a part thereof.

§ 654.3 [Amended]

3. In § 654.3, paragraph (d) is removed.

4. Section 654.4 is revised to read as follows:

§ 654.4 Trap limitation program.

The provisions of this section establish a Federal stone crab trap limitation program in the management area that complements the stone crab trap limitation program implemented by the Florida Fish and Wildlife Conservation Commission (FFWCC). The Federal program requires issuance of a commercial vessel permit, a trap certificate, and annual trap tags. A person in the management area who is in compliance with the FFWCC trap limitation program is exempt from the requirements of the Federal trap limitation program specified in this section.

(a) *Commercial vessel permit requirements.* Effective October 1, 2002, for a person aboard a vessel, except a person who is in compliance with the FFWCC stone crab trap limitation program, to possess or use a stone crab trap, possess more than 1 gallon (4.5 L) of stone crab claws, or sell stone crab claws in or from the management area, a valid Federal commercial vessel permit for stone crab must have been issued to the vessel and must be on board.

(1) *Eligibility for a commercial vessel permit.* The owner of a vessel is eligible to receive a Federal commercial vessel permit for stone crab if the owner provides documentation as specified in paragraph (a)(2) of this section substantiating his or her landings of a minimum of 300 lb (136 kg) of stone crab claws harvested from the management area or Florida's state waters during at least one of the stone crab fishing seasons, October 15 through May 15, for 1995/1996 through 1997/1998. A person who has a valid stone crab trap certificate issued under the stone crab trap limitation program implemented by the FFWCC or a person whose Florida saltwater products license (SPL) has been suspended or revoked is not eligible for a Federal commercial vessel permit for stone crab.

(2) *Documentation of eligibility for a commercial vessel permit.* The only acceptable source of documentation of stone crab claws landed in Florida is landings documented by the Florida trip ticket system. To be creditable toward the 300–lb (136–kg) minimum qualifying landings, Florida landings must be associated with a single Florida SPL. Landings of stone crab harvested from the management area or Florida's state waters but landed in a state other than Florida may be documented by dealer records. Such dealer records must definitively show the species known as stone crab and must include the vessel's name, official number, or other reference that provides a way of clearly identifying the vessel; dates and amounts of stone crab landings; and a sworn affidavit by the dealer confirming the accuracy and authenticity of the records. A sworn affidavit is an official written statement wherein the individual signing the affidavit affirms that the information presented is accurate and can be substantiated, under penalty of law. Documentation of landings are subject to verification by comparison with state, Federal, and other records and information. Submission of false documentation is a violation of the regulations in this part and may disqualify the owner from participation in the fishery.

(3) *Application for a commercial vessel permit.* Applications for a commercial vessel permit for stone crab are available from the RA. A vessel owner (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner) who desires such a permit must submit an application, including documentation of stone crab landings as specified in paragraphs (a)(1) and (2) of this section, to the RA postmarked or hand-delivered not later than 90 days after the effective date of the final rule that contains this paragraph (a)(1)(3). Failure to apply in a timely manner will preclude permit issuance even when the vessel owner meets the eligibility criteria for such permit.

(i) An applicant must provide the following:

(A) A copy of the vessel's valid USCG certificate of documentation or, if not documented, a copy of its valid state registration certificate.

(B) Vessel name and official number.

(C) Name, address, telephone number, and other identifying information of the vessel owner.

(D) Documentation of eligibility as specified in paragraphs (a)(1) and (2) of this section.

(E) The applicant's desired color code for use in identifying his or her vessel and buoys (white is not an acceptable color code).

(F) Number of traps authorized under § 654.4(b) that will be used and trap dimensions.

(G) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas, if specified on the application form.

(H) Any other information that may be necessary for the issuance or administration of the permit, if specified on the application form.

(ii) [Reserved]

(4) *Notification of incomplete application.* Upon receipt of an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned.

(5) *Change in application information.* The owner of a vessel with a commercial vessel permit must notify the RA within 30 days after any change in the application information specified in paragraph (a)(3)(i) of this section. The permit is void if any change in the information is not reported within 30 days.

(6) *Initial commercial vessel permit issuance.* (i) The RA will issue an initial commercial vessel permit for stone crab to an applicant if the applicant submits a complete application that complies with the requirements of paragraphs (a)(1), (2), and (3) of this section. An application is complete when all requested forms, information, and documentation have been received.

(ii) If the eligibility requirements specified in paragraphs (a)(1) and (2) of this section are not met, the RA will notify the vessel owner of such determination and the reasons for it not later than 30 days after receipt of the application.

(7) *Appeal of initial denial of a commercial vessel permit*—(i) *General procedure.* An applicant for a commercial vessel permit for stone crab who has complied with the application procedures in paragraph (a)(3) of this section and who initially has been denied such permit by the RA may appeal that decision to the RA. The appeal must be postmarked or hand-delivered to the RA not later than 60 days after the date of notification of the initial denial. An appeal must be in writing and must include copies of landing records relating to eligibility, such other reliable evidence upon which the facts related to issuance can be resolved, and a concise statement of the reasons the initial denial should be reversed or modified. An appeal constitutes the applicant's written authorization under § 402(b)(1)(F) of the Magnuson-Stevens Act for the RA to make available to the appellate officer(s) such confidential landings and other records as are pertinent to the matter under appeal. The applicant may request a hearing. The RA will appoint one or more appellate officers to review the appeal and make recommendations to the RA. The appellate officer(s) may recommend that the RA deny the appeal, issue a decision on the merits of the appeal if the records are sufficient to reach a final judgement, or conduct a hearing. The RA may affirm, reverse, modify, or remand the appellate officer(s) recommendation.

(ii) *Hearings.* If the RA determines that a hearing is necessary and appropriate, the RA or appellate officer(s) will notify the applicant of the place and date of the hearing. The applicant will be allowed 30 days after the date of the notification of the hearing to provide supplementary documentary evidence in support of the appeal.

(8) *Duration of a commercial vessel permit.* A commercial vessel permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or the vessel is sold.

(9) *Transferability of a commercial vessel permit.* A commercial vessel permit issued under this section is not transferable or assignable, except that an owner of a permitted vessel may request that the RA transfer the permit to another vessel owned by the same entity. To effect such a transfer, the owner must return the existing permit to the RA along with an application for a commercial vessel permit for the replacement vessel. A commercial vessel permit or trap certificate can not be leased.

(10) *Renewal of a commercial vessel permit.* A commercial vessel permit required by this section is issued on an annual basis. An owner whose permit is expiring will be mailed a notification by the RA approximately 2 months prior to expiration of the current permit. The notification will include a preprinted renewal application. A vessel owner who does not receive a notification of status of renewal of a permit by 45 days prior to expiration of the current permit must contact the RA. A permit that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the RA within 1 year of the expiration date of the permit.

(11) *Display of a commercial vessel permit.* A commercial vessel permit issued under this section must be carried on board the vessel. The operator of a vessel must present the permit for inspection upon the request of an authorized officer.

(12) *Sanctions and denials of a commercial vessel permit.* A commercial vessel permit issued pursuant to this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(13) Alteration of a commercial vessel permit. A commercial vessel permit that is altered, erased, or mutilated is invalid.

(14) *Replacement of a commercial vessel permit.* A replacement permit may be issued. An application for a replacement permit is not considered a new application.

(15) *Fees.* A fee is charged for each application for initial issuance or renewal of a permit, for each request for replacement of such permit, and for each trap tag as required under this section. The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RA, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application, request for replacement, or request for trap tags.

(b) *Issuance of a trap certificate and annual trap tags.* The RA will issue a trap certificate and annual trap tags to each person who has been issued a Federal commercial vessel permit for stone crab. The number of trap tags issued will be determined, based upon the documentation of landings submitted consistent with § 654.4(a)(1), (2) and (3), by dividing that person's highest landings of stone crab claws during any one of the fishing seasons for 1995/1996, 1996/1997, or 1997/1998 by 5 lb (2.27 kg).

5. In § 654.6, introductory text is added and paragraphs (a) and (b) are revised to read as follows:

§ 654.6 Vessel and gear identification.

An owner or operator of a vessel for which a valid Federal commercial vessel permit for stone crab has been issued must comply with the vessel and gear identification requirements of this section. An owner or operator of a vessel in the management area who is in compliance with the stone crab trap limitation program and vessel and gear marking requirements implemented by the FFWCC is exempt from the requirements of this section.

(a) *Vessel identification.* An owner or operator of a vessel for which a valid

Federal commercial vessel permit for stone crab has been issued must—

(1) *Display the vessel's official number.* (i) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(ii) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(iii) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in height for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in height for vessels 25 ft (7.6 m) long or less.

(2) *Display the color code assigned by the RA.* (i) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(ii) In the form of a circle permanently affixed to or painted on the vessel.

(iii) At least 18 inches (45.7 cm) in diameter for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in diameter for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in diameter for vessels 25 ft (7.6 m) long or less.

(3) Keep the official number and the color code clearly legible and in good repair and ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material on board obstructs the view of the official number or the color code from an enforcement vessel or aircraft.

(b) *Gear identification.* (1) *Traps.* A stone crab trap used by or possessed on board a vessel with a Federal commercial vessel permit for stone crab must have a valid annual trap tag issued by the RA attached.

(2) *Trap buoys.* A buoy must be attached to each stone crab trap or at each end of a string of traps. Each buoy must display the official number and the color code assigned by the RA so as to be easily distinguished, located, and identified.

(3) *Presumption of trap ownership.* A stone crab trap will be presumed to be the property of the most recently documented owner. This presumption will not apply to traps that are lost if the owner reports the loss within 15 days to the RA.

(4) *Unmarked traps or buoys.* An unmarked stone crab trap or a buoy deployed in the EEZ where such trap or buoy is required to be marked is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

6. In § 654.7, paragraphs (a) and (g) are revised and paragraphs (o) and (p) are added to read as follows:

§ 654.7 Prohibitions.

* * * * *

(a) Falsify or fail to display and maintain vessel and gear identification, as required by § 654.6.

* * * * *

(g) Use or possess in the management area a stone crab trap that does not comply with the trap construction requirements as specified in § 654.22(a).

* * * * *

(o) Except for a person who is in compliance with the FFWCC stone crab trap limitation program, possess or use a stone crab trap, possess more than 1 gallon (4.5 L) of stone crab claws, or sell stone crab claws in or from the management area without a commercial vessel permit as specified in § 654.4(a).

(p) Falsify information on an application for a commercial vessel permit or submitted in support of such application as specified in § 654.4(a)(1) or (2).

7. Section 654.8 is revised to read as follows:

§ 654.8 Facilitation of enforcement.

See § 600.730 of this chapter.

8. Section 654.9 is revised to read as follows:

§ 654.9 Penalties.

See § 600.735 of this chapter.

§§ 654.20, 654.25, 654.26, 654.27 [Amended]

9. In 50 CFR part 654 remove the words ''Regional Director'' and add in their place, the words, ''Regional Administrator'' in the following places:

(a) Section 654.20(b)(2)(i);

(b) Section 654.25(b);

(c) Section 654.26; and

(d) Section 654.27.

§§ 654.1, 654.2, 654.7 [Amended]

10. In 50 CFR part 654 remove the words ''Magnuson Act'' and add in their place, the words, ''Magnuson-Stevens Act'' in the following places:

(a) Section 654.1(a);

(b) Section 654.2 introductory text; and

(c) Section 654.7(n).

[FR Doc. 02–15995 Filed 6–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000504124–0124–01; I.D. 011900B]

RIN 0648–AK11

Fisheries off the West Coast and in the Western Pacific; Prohibition on the Use of Set Net Fishing Gear; Withdrawal of Proposed Rule

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

ACTION: Proposed rule; withdrawal.

SUMMARY: NMFS withdraws the May 19, 2000, proposed rule to prohibit the use of set net (gillnet and trammel nets) fishing gear to take groundfish species in portions of the U.S. exclusive economic zone (EEZ) (also known as the fishery management area) adjacent to State waters at four areas off California. Groundfish fisheries in the fishery management area are managed under the Fishery Management Plan for Groundfish Fisheries off the West Coast (Groundfish FMP). The proposed rule is being withdrawn because it is not necessary and appropriate for the conservation and management of groundfish fisheries under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Groundfish FMP.

DATES: This proposed rule is withdrawn June 25, 2002.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4040.

SUPPLEMENTARY INFORMATION: A proposed rule was published on May 19, 2000 (65 FR 31871), that would have prohibited the use of set net (gillnet and trammel nets) fishing gear to take groundfish species in portions of the EEZ (also known as the fishery management area) adjacent to state waters at 4 locations off California. The history of the action and the rationale for the proposed rule were provided in the preamble to the proposed rule and will not be repeated here.

Upon reviewing the history of this action, the comments received on the proposed rule, and the legal and management issues involved, NMFS has concluded that the proposed rule should be withdrawn. Only one of the

4 EEZ areas that would have been closed to set net use is currently used by set net fishers. The vessels that use set net gear at this area (Huntington Flats) do not target groundfish, and their catches of groundfish are so small as to have minimal effect on the stocks. Fishing by these vessels thus does not adversely affect the administration and implementation of the Groundfish FMP. Accordingly, it is not necessary to control their fishing activities under the regulations implementing the Groundfish FMP in order to further the objectives of the Groundfish FMP or to achieve optimum yield and prevent overfishing. Therefore, NMFS is hereby withdrawing the proposed rule because it is not necessary and appropriate under the Magnuson-Stevens Act and other applicable law.

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

Dated: June 18, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–15989 Filed 6–24–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 122
Tuesday, June 25, 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

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension for a currently approved information collection in support of the CCC Export Credit Guarantee Program (GSM–102), the CCC Intermediate Credit Guarantee Program (GSM–103) and the CCC Supplier Credit Guarantee Program (SCGP) based on re-estimates.

DATES: Comments on this notice must be received by August 26, 2002, to be assured of consideration.

Additional Information or Comments: Contact William Hawkins, Director, Program Administration Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgStop 1031, Washington, DC 20250–1031, telephone (202) 720–3241.

SUPPLEMENTARY INFORMATION:

Title: CCC Export Credit Guarantee Program (GSM–102), CCC Intermediate Export Credit Guarantee Program (GSM–103), and CCC Supplier Credit Guarantee Program (SCGP).

OMB Number: 0551–0004 (GSM–102 and GSM–103) and 0551–0037 (SCGP). These will be combined into OMB Number 0551–0004 if this request is approved.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of a currently approved information collection.

Abstract: The primary objective of the GSM–102, GSM–103 and SCGP programs is to expand U.S. agricultural exports by making available export credit guarantees to encourage U.S. private sector financing of foreign purchases of U.S. agricultural commodities on credit terms. The CCC currently has programs operating in at least 40 countries and country regions, with 169 exporters eligible to participate. Under 7 CFR Part 1493, exporters are required to submit the following: (1) Information about the exporter for program participation, (2) export sales information in connection with applying for a payment guarantee, (3) information regarding the actual export of the commodity, (evidence of export report), (4) notice of default and claims for loss, and (5) other documents, if applicable, including notice of assignment of the right to receive proceeds under the export credit guarantee. In addition, each exporter and exporter's assignee (U.S. financial institution) must maintain records on all information submitted to CCC and in connection with sales made under GSM–102, GSM–103 and SCGP. The information collected is used by CCC to manage, plan, evaluate and account for government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: The public reporting burden for these collections is estimated to average 0.47 hours per GSM–102/3 response and 0.62 hours per SCGP response.

Respondents: Exporters of U.S. agricultural commodities, banks or other financial institutions, producer associations, export trade associations, and U.S. Government agencies.

Estimated Number of Respondents: 857 per annum.

Estimated Number of Responses per Respondent: 26.6 per annum.

Estimated Total Annual Burden of Respondents: 11,415.30 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Requests for Comments: Send comments regarding (a) 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; (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 those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to William Hawkins, Director, Program Administration Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgStop 1031, Washington, DC 20250–1031, or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD). All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on June 19, 2001.

Ira D. Branson,

Acting General Sales Manager, Foreign Agricultural Service.

[FR Doc. 02–15918 Filed 6–24–02; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

L'Anguille River Watershed Poinsett and Craighead Counties, AR

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the L'Anguille River Watershed, in Poinsett and Craighead Counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: Kalven L. Trice, State Conservationist, Natural Resources Conservation Service, Room 3416 Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, Telephone (501) 301–3100.

SUPPLEMENTARY INFORMATION: Due to the preliminary anticipated Federal cost of this project, NRCS policy requires that an environmental impact statement be prepared.

The project concerns a plan to address groundwater declines and measures to increase water use efficiency. Alternatives under consideration to reach this objective include the construction of on-farm water storage reservoirs, underground pipelines, tailwater recovery systems, and improved irrigation management.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. NRCS held a combined public hearing and scoping meeting with the Arkansas Soil and Water Commission on February 1, 2001 at Weiner, Arkansas to discuss this watershed. Comments were received at and following this meeting. In order to comply with the National Environmental Policy Act of 1969 (NEPA), additional comments from the public and interested agencies will be accepted until July 15, 2002. Further information on the proposed action or future public meetings may be obtained from Kalven L. Trice, State Conservationist, at the above address and telephone number.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: June 5, 2002.

Kalven L. Trice,

State Conservationist,

[FR Doc. 02–15921 Filed 6–24–02; 8:45 am]

BILLING CODE 3210–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service:

Louisa Generation L.L.C.; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact with respect to the construction and operation of a 490-megawatt electric generation plant in Louisa County, Virginia. RUS may provide financing for the project to Louisa Generation L.L.C. (a subsidiary of Old Dominion Electric Cooperative).

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–0468, e-mail at *bquigel@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: Old Dominion Electric Cooperative would be the agent to construct and operate the proposed plant. The preferred plant site is located just east of the Louisa/Albemarle County line at the intersection of Klockner Road and a CSX Railroad track. The site is approximately 90 acres. About 30 acres of the site would be developed for the plant. The plant would be made up of one 170 megawatt, GE Frame 7FA and four 80 megawatt, 7EA combustion turbines. The nominal output of the plant will be 490 megawatts. The primary fuel will be natural gas. Low sulfur fuel oil will be used as a back-up fuel.

The plant will be a peaking facility. It is anticipated that each of the five turbines would operate for no more than 1,800 hours per year. This would be during periods of high-energy demand in Virginia. Columbia Gas of Virginia will provide the natural gas for the plant by constructing the natural gas distribution pipeline in an existing gas pipeline right-of-way. No new electric transmission lines are required to be constructed for the proposed plant. A water pipeline and storage tank to be owned and constructed by the Louisa County Water Authority will be built to provide water to the generation plant. The length of the 12-inch water pipeline is approximately 2.5 miles and will require a permanent 20-foot easement for maintenance and operation. The water storage tank will have a capacity of 80,000 gallons and will be approximately 38 feet high and 20 feet in diameter. The tank will be constructed on an approximately ¼ acre parcel owned by Louisa County.

Copies of the finding of no significant impact are available from RUS at the address provided herein or from Mr. David Smith, Old Dominion Electric Cooperative, Insbrook Corporate Center, 4201 Dominion Boulevard, Glen Allen, Virginia 23060, telephone (804) 968–4045. Mr. Smith's E-mail address is *dsmith@odec.com.*

Dated: June 20, 2002.

Blaine D. Stockton,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 02–16029 Filed 6–24–02; 8:45 am]

BILLING CODE 3410–15dash;P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and request for revocation in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: June 25, 2002.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (2001), for administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Ball Bearings from Germany.

Initiation of Reviews: In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings.

We intend to issue the final results of these reviews not later than May 31, 2003.

	Period to be reviewed
Antidumping duty proceedings	
Belgium: Stainless Steel Plate in Coils, A–423–808	5/1/01–4/30/02
ALZ, N.V.	
Brazil: Frozen Concentrated Orange Juice, A–351–605	5/1/01—4/30/02
Citrovita Agro Industrial Ltda/Cambuhy MC Industrial Ltda/Cambuhy Citrus Comercial e Exportadora	
Branco Peres Citrus S.A.	
CTM Citrus S.A.	
Sucorrico S.A.	
Indonesia: Extruded Rubber Thread, A–560–803	5/1/01–4/30/02
PT Swasthi Parama Mulya	
Republic of Korea: Certain Polyester Staple Fiber, A–580–839	5/1/01–4/30/02
Daeyang Industrial Co., Ltd.	
East Young Co., Ltd.	
Estal Industry Co., Ltd.	
Huvis Corporation	
Keon Baek Co., Ltd.	
Mijung Ind. Co., Ltd.	
Sam Young Synthetics Co., Ltd.	
Sunglim Co., Ltd.	
Republic of Korea: Stainless Steel Plate in Coils A–580–831	5/1/01–4/30/02
Pohang Iron & Steel Co., Ltd.	
Taiwan: Certain Polyester Staple Fiber A–583–833	5/1/01–4/30/02
Far Eastern Textile, Ltd.	
Nan Ya Plastics Corporation, Ltd.	
Taiwan: Stainless Steel Plate in Coils, A–583–830	5/1/01–4/30/02
Ta Chen Stainless Pipe Co., Ltd.	
Yieh United Steel Corporation	
The People's Republic of China: Iron Construction Castings, A–570–502	5/1/01–4/30/02
Mucun Foundry of Fangzi District	
Turkey: Certain Welded Carbon Steel Pipe and Tube, A–489–501	5/1/01–4/30/02
The Borusan Group	

	Period/Class or kind
Antifriction Bearings Proceedings and Firms	
France: A–427–801	5/1/01–4/30/02.
Ringball Corporation	Ball.
SKF France S.A./Sarma (including all relevant affiliates)	Ball & Spherical.
SNR Roulements	Ball.
Germany: A–428–801	5/1/01–4/30/02.
FAG Kugelfischer Georg Schaefer AG	Ball.
INA-Schaeffer FG	Ball.
Paul Mueller GmbH & Co., KG	Ball.
Ringball Corporation	Ball.
Sachs Handel GmbH	Ball.
SKF GmbH	Ball.
ZF Sachs	Ball.
Torrington Nadellager GmbH	Ball.
Italy: A–475–801	5/1/01–4/30/02.
FAG Italia S.p.A. (including all relevant affiliates)	Ball.
Ringball Corporation	Ball.
SKF Industrie S.p.A (including all relevant affiliates)	Ball.
Japan: A–588–804	5/1/01–4/30/02.
Koyo Seiko Co., Ltd.	Ball.
Nachi-Fujikoshi Corporation	Ball.
Nippon Pillow Block Sales Company, Ltd.	Ball.
NSK Ltd.	Ball.
NTN Corporation	Ball.
Asahi Seiko Co., Ltd.	Ball.
Kitanihon Seiki Co., Ltd. (including all relevant affiliates)	Ball.
Sapporo Kitanihon	Ball.
Sanbi Co., Ltd.	Ball.
Jiro Okayama	Ball.
Shinyei Kaisha	Ball.
Phoenix International Corp.	Ball.
Taisei Ind., Ltd.	Ball.
Eisho Trading Co.	Ball.
Singapore: A–559–801	5/1/01–4/30/02.

	Period/Class or kind
NMB/Pelmec	Ball.
The United Kingdom: A–412–801	5/1/01–4/30/02.
The Barden Corporation (UK) Limited	Ball.
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211 or a determination under § 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: June 19, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–16015 Filed 6–24–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–831]

Notice of Amended Final Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from the Republic of Korea; Correction

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review of stainless steel plate in coils from the Republic of Korea.

EFFECTIVE DATE: June 25, 2002.

SUMMARY: On April 23, 2002, the Department issued its amended final results for the administrative review of the antidumping duty order on stainless steel plate in coils from the Republic of Korea for the period of review November 4, 1998, through April 30, 2000. *See Notice of Amended Final Antidumping Duty Administrative Review: Stainless Steel Plate in Coils From the Republic of Korea (''Amended Final Results''*), 67 FR 19734 (April 23, 2002).

Our *Amended Final Results* erroneously stated that the case number was A–580–841. However, the correct case number is A–580–831. No other changes have been made to the *Amended Final Results.*

FOR FURTHER INFORMATION CONTACT: Brandon Farlander and Robert Bolling, 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) 482–0182 and (202) 482–3434, respectively.

DATED: June 14, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–16014 Filed 6–24–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061402F]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of applications for Incidental Take Permits 1391, 1392, and 1393 with Habitat Conservation Plans and availability for public comment.

SUMMARY: Notice is hereby given that NMFS has received three revised applications for incidental take permits (Permits) from the Public Utility District (PUD) No. 1 of Douglas County (Wells application) and PUD No. 1 of Chelan County (Rocky Reach and Rock Island applications), in the State of Washington pursuant to the Endangered Species Act (ESA). Each PUD has revised its application(s) to include a revised Anadromous Fish Agreement and Habitat Conservation Plan (HCP), as required by the ESA, designed to minimize and mitigate any such take of endangered and threatened species. The revised Anadromous Fish Agreements and HCPs are also intended to serve as agreements to satisfy the PUDs obligations under the Federal Power Act and related federal and state laws governing effects on anadromous fish and their habitat. The PUDs seek authorization for the incidental take of listed species associated with the operation of three hydroelectric projects located on the Columbia River between river mile 453.4 and 515.8 near the city of Wenatchee, Washington. These projects impact anadromous fish primarily by impeding up and downstream passage of fish and inundating riverine habitat.NMFS published notice of a Draft Environmental Impact Statement (DEIS) pursuant to the National Environmental Policy Act (NEPA) on December 29, 2000 and received public comment through May 1, 2001. The DEIS evaluated the previous version of the Anadromous Fish Agreements and HCPs. The revised permit applications and Anadromous Fish Agreements and HCPs, which are the subject of this notice, reflect revisions developed to address comments received on the DEIS and to clarify the PUDs responsibilities. NMFS will publish a final EIS which addresses comments received on the DEIS and additional comments received pursuant to this notice. All comments received will become part of the public record and will be available for review pursuant to the ESA.

DATES: Written comments from interested parties on the revised permit applications must be received at the appropriate address or fax number (*see* **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on July 25, 2002.

ADDRESSES: Submit comments on the revised permit application and requests for information to Ritchie Graves, National Marine Fisheries Service, Northwest Region, Hydro Program, 525 NE Oregon Street, Suite 420, Portland, OR 97232–2737. Comments may also be sent via fascimile to 503/231–2318. Comments will not be accepted if submitted via e-mail or the Internet. The revised permit applications, revised Anadromous Fish Agreements and HCPs, and supporting documents are also available electronically on the Internet at *www.nwr.noaa.gov*. Comments received will also be available for public inspection, by appointment, during normal business hours by calling (503) 231–6891.

FOR FURTHER INFORMATION CONTACT: Ritchie Graves at (ph: 503/231–6891, fascimile: 503/231–2318, e-mail: *Ritchie.Graves@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Section 9 of the ESA and Federal regulations prohibit the taking of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits under section 10(a)(1)(b) of the ESA, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Authority to take listed species is subject to conditions set forth in the permits. Permits are issued in accordance with and are subject to the ESA and NMFS regulations governing threatened and endangered species (50 CFR 222.307).

Species Covered in This Notice

The following species and evolutionarily significant units are covered in this Notice:

Endangered Upper Columbia River (UCR) spring-run chinook salmon (*Oncorhynchus tshawytscha*) and steelhead (*O. mykiss*), unlisted UCR summer/fall-run chinook salmon (*O. tshawytscha*), Okanogan River and Lake Wenatchee sockeye salmon (*O. nerka*), and UCR coho salmon (*O. kisutch*).

Background

The applicants provided NMFS with proposed Anadromous Fish Agreements and HCPs with the intent of obtaining incidental take permits pursuant to ESA section 10(a)(1)(B) in July, 1998. The proposed Anadromous Fish Agreements and HCPs were developed over several years of negotiations with federal and state resource agencies, Indian tribes, and with American Rivers (a non-governmental environmental organization). While these negotiations produced the agreements proposed in 1998, additional information and input was needed to complete the applications. NMFS developed a DEIS analyzing the proposed agreements and HCPs and issued it for public comment on December 29, 2000. Beginning in September, 2002, the parties engaged in additional discussions to resolve issues raised in DEIS comments and to develop complete permit applications. As a result of these discussions, revised Anadromous Fish Agreements and HCPs were developed. NMFS has executed these as contingent agreements, which are effective only upon approval by the Federal Energy Regulatory Commission and issuance by NMFS of incidental take permits after completion of the NEPA and ESA review processes, including thorough consideration of any comments received.

Habitat Conservation Plan

The revised Anadromous Fish Agreements and HCPs continue to include a standard of ''no net impact'' which consists of a 95–percent juvenile dam passage survival standard and a 91–percent total project survival standard for each of the Plan species. These standards will be achieved through implementation of various measures including increased spill and a new juvenile bypass facility at the Rocky Reach Project. The total project survival standard includes both the juvenile and adult life stages of the Plan species. The unavoidable project mortality (i.e., the remaining 9 percent of the Plan species still impacted by project operations) will be mitigated through a habitat conservation fund and a supplementation program. The habitat fund will address 2 percent of the unavoidable loss and the supplementation program will address the remaining 7 percent. The applicants are requesting incidental take permits with a term of 50 years, settlement under the Federal Power Act when each project is relicensed, and ''no surprises'' guarantee from the Federal government, limited in certain circumstances as defined in the agreements.

This notice is provided pursuant to section 10(a) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the ESA and NEPA regulations. If it is determined that the requirements are met, a permit will be issued for the incidental takes of listed species under the jurisdiction of NMFS. The final NEPA and permit determinations will not be completed until after the end of the 30–day comment period and NMFS will fully consider all public comments received during the comment period.

Dated: June 19, 2002.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service

[FR Doc. 02–15991 Filed 6–25–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061202B]

Taking and Importing of Marine Mammals

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

ACTION: Notice of affirmative finding renewal.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) renewed the affirmative finding for the Government of Mexico under the Marine Mammal Protection Act (MMPA). The renewal of Mexico's affirmative finding allows for the continued importation into the United States of yellowfin tuna and yellowfin tuna products harvested in the eastern tropical Pacific Ocean (ETP) after March 3, 1999, by purse seine vessels operating under Mexican jurisdiction. The affirmative finding renewal was based on review of documentary evidence submitted by the Government of Mexico and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the Department of State.

DATES: Effective April 1, 2002, through March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California, 90802–4213; Phone 562–980–4000; Fax 562–980–4018.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.*, as

amended by the International Dolphin Conservation Program Act (IDCPA) (Pub. L. 105–42), allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State. A finding will remain valid for 1 year (April 1 through March 31) or for such other period as the Assistant Administrator may determine. An affirmative finding applies to yellowfin tuna and tuna products that were harvested in the ETP by purse seine vessels under the jurisdiction of the nation after March 3, 1999, the effective date of the IDCPA.

The affirmative finding process requires that the harvesting nation meet several conditions related to compliance with the International Dolphin Conservation Program (IDCP). Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. A nation may opt to provide information regarding compliance with the IDCP directly to NMFS on an annual basis or to authorize the IATTC to release the information to NMFS in years when NMFS will review and consider whether to issue an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f)(9) are no longer being met or that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the IDCP.

As a part of the annual review process set forth in 50 CFR 216.24 (f)(9), the Assistant Administrator considered documentary evidence submitted by the Government of Mexico and obtained from the IATTC and the Department of State and determined that the requirements under the MMPA to receive an affirmative finding have been met for the purposes of renewing an affirmative finding.

After consultation with the Department of State, NMFS has renewed the Government of Mexico's affirmative finding, thereby allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP after March 3, 1999, by Mexican-flag purse seine vessels with a carrying capacity greater than 400 short tons (362.8 metric tons) or purse seine vessels with a carrying capacity greater than 400 short tons (362.8 metric tons) operating under Mexican jurisdiction. This renewal will remain in effect for 1 year (April 1, 2002, through March 31, 2003).

In subsequent years 2003 and 2004, the Assistant Administrator will determine on an annual basis whether the Government of Mexico is meeting the requirements under section 101 (a)(2)(B) and (C) of the MMPA. If necessary, documentary evidence may also be requested from the Government of Mexico to determine whether the affirmative finding criteria are being met. If the affirmative finding for the Government of Mexico is renewed after NMFS' annual review in the years 2003 and 2004, the Government of Mexico must submit a new application in early 2005 for an affirmative finding to be effective for the period April 1, 2005, through March 31, 2006, and subsequent 4 years.

Dated: June 19, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–15990 Filed 6–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061202C]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of an application for a scientific research permit (1386) and receipt of applications to modify two permits (1291, 1322).

SUMMARY: NMFS has received one new permit application and two applications to modify existing scientific research permits related to Pacific salmon and steelhead. The proposed research is intended to increase knowledge of the ESA-listed species and to help guide management and conservation efforts.

DATES: Comments or requests for a public hearing on the new application or modification requests must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight savings time on July 25, 2002.

ADDRESSES: Written comments on the new application or modification requests should be sent to Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (503–230–5400). Comments may also be sent via fax to 503-230-5435. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Steve Stone, Portland, OR (ph: 503–231–2317, Fax: 503–230–5435, e-mail: *steve.stone@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following ESA-listed species and evolutionarily significant units (ESUs) are covered in this notice:

Sockeye salmon (*Oncorhynchus nerka*): endangered Snake River (SnR); threatened Ozette Lake.

Chinook salmon (*O. tshawytscha*): endangered, naturally produced and artificially propagated, upper Columbia River (UCR) spring-run; threatened, naturally produced and artificially propagated, SnR spring/summer; threatened SnR fall; threatened lower Columbia River (LCR); threatened upper Willamette River (UWR); threatened, naturally produced and artificially propagated, Puget Sound.

Chum salmon (*O. keta*): threatened Columbia River (CR); threatened Hood Canal summer-run.

Steelhead (*O. mykiss*): endangered, naturally produced and artificially propagated, UCR; threatened SnR; threatened middle Columbia River (MCR); threatened LCR.

Authority

Scientific research and/or enhancement permits are issued under Section 10(a)(1)(A) of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 *et. seq*). Issuance of permits and permit modifications, as required by the ESA, is based on a finding that such permit/modifications: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this

notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

New Application Received

Permit 1386

The Washington Department of Ecology at Olympia, WA (WDOE) requests a five year permit for annual takes of adults and juveniles all of the ESA-listed anadromous fish ESUs in the state of Washington associated with a research project proposed to occur in various streams and tributaries throughout the state. The objective of the research is to investigate the occurrence and monitor the concentrations of toxic contaminants in edible fish tissue and the freshwater environments of the state as part of the Washington State Toxics Monitoring Program. The proposed project responds in part to the state's responsibility for protecting residents from the health risks associated with the consumption of contaminated, non-commercially caught fish. In addition, the proposed project responds to requirements of the federal Clean Water Act. The proposed project will help determine whether selected waters meet state water quality standards for toxic contaminants in fish as well as providing information about risks to humans and wildlife from the consumption of fish. Potential benefits to ESA-listed species as a result of the project may include the development of pollution control actions such as habitat improvements and/or the reduction or removal of the sources of toxic contaminants. Up to 20 adults and up to 100 juveniles from each ESA-listed fish ESU in Washington state are proposed to be captured annually (using nets, seines, or electrofishing), sampled for biological information, and released. Up to 2 percent of the ESA-listed juvenile fish proposed to be handled by WDOE researchers may be killed unintentionally.

Modification Requests Received

Permit 1291–Modification 1

The U.S. Geological Survey at Cook, WA (USGS) requests modification 1 to scientific research permit 1291. Permit 1291 authorizes USGS annual takes of ESA-listed anadromous fish juveniles associated with a research project that is being conducted at John Day, The Dalles, and Bonneville Dams on the lower Columbia River in the Pacific Northwest. The purpose of the research is to monitor juvenile fish movement, distribution, behavior, and survival from John Day Dam downstream past Bonneville Dam using radiotelemetry technology. The research will benefit ESA-listed fish species by providing information on spill effectiveness, forebay residence times, and guidance efficiency under various flow regimes that will allow federal resource managers to make adjustments to bypass/collection structures to optimize downriver migrant survival at the hydropower projects. For modification 1, USGS requests an increase in the annual take of juvenile, endangered, SnR sockeye salmon associated with the research. The take increase is requested because the number of outmigrating sockeye salmon juveniles present in the mainstem Columbia River has increased substantially in recent years due to an increase in hatchery production from the Idaho Department of Fish and Game's captive broodstock program. Each year, up to 170 ESA-listed sockeye salmon juveniles are proposed to be captured by USGS from the juvenile bypass facilities at the dams, sampled for biological information, and released. Up to 3 percent of the ESA-listed juvenile fish proposed to be handled by USGS researchers and/or their designated agents may be killed unintentionally. The permit modification is requested to be valid for the duration of the permit which expires on December 31, 2006.

Permit 1322–Modification 1

On April 12, 2002, NMFS published a notice in the **Federal Register** (67 FR 17970) that the Northwest Fisheries Science Center at Seattle, WA (NWFSC) requested modification 1 to scientific research permit 1322. For modification 1, NWFSC requested additional annual takes of ESA-listed anadromous fish associated with a research project that is being conducted in the lower Columbia River estuary. NMFS has received an amended application for a permit modification from USGS. In addition to the takes designated in the April 12, 2002 notice, USGS is requesting additional annual lethal takes of up to 38 juvenile, endangered, naturally produced and artificially propagated, UCR spring chinook salmon; up to four juvenile, threatened, artificially propagated, SnR spring/summer chinook salmon; up to 3 juvenile, threatened, UWR chinook salmon; and up to 400 juvenile, threatened, CR chum salmon associated with the research. Modification 1 is requested to be valid for the duration of the permit which expires on December 31, 2006.

Dated: June 19, 2002.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–15992 Filed 6–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061802A]

Marine Mammals; File No. 895–1450

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Rachel Cartwright, P.O. Box 1317, Lahaina, Hawaii 96767, has been issued a minor amendment to scientific research Permit No.895-1450-01.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Regional Administrator, Alaska Region, NMFS, 709 W 9th Street, Federal Building, Room 461, P.O. Box 21668, Juneau, AK 99802 (907/586–7235); and

Protected Species Program Manager, Pacific Islands Area Office, NMFS, NOAA, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, Hawaii 96814-4700 (808/973–2935).

FOR FURTHER INFORMATION CONTACT: Lynne Barre or Jill Lewandowski, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 895–1450–01, originally issued on December 23, 1998 (64 FR 862) has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The permit holder requested authorization to extend Permit No. 895-1450-01 for an additional 12 months. The new expiration date for the permit is April 30, 2003, and the permit number has been changed to No. 895–

1450–02 to reflect that the permit has been amended.

Dated: June 19, 2002.

Trevor R. Spradlin,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–15993 Filed 6–24–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

June 20, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 25, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 443 is being increased for swing, reducing the limit for Category 315 to account for the swing being applied to Category 443.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 57044, published on November 14, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 20, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 8, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and wool textile products in the following categories, produced or manufactured in Colombia and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on June 25, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
315	34,863,178 square meters.
443	146,252 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–15958 Filed 6–24–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Romania

June 20, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 27, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63033, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 20, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on June 27, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
315	4,891,545 square meters.
347/348	805,820 dozen.
410	128,327 square meters.
435	11,914 dozen.
442	14,935 dozen.
447/448	30,447 dozen.

Category	Adjusted twelve-month limit [1]
647/648	329,805 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–15960 Filed 6–24–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Further Extension of a Previously Announced Grace Period on Export Visa and Quota Requirements for Certain Textile Costumes Produced or Manufactured in Various Countries

June 20, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a grace period on export visa and quota requirements for certain textile costumes.

SUMMARY: On March 1, 2002, the U.S. Customs Service published a notice in the Federal Register informing the public that certain imported textile costumes, entered for consumption or withdrawn from warehouse for consumption after March 1, 2002, are to be classified as wearing apparel in accordance with the Court of International Trade decision in Rubies Costume Company v. United States (67 FR 9504). This announcement applied to imported textile costumes of the character covered by the Customs decision published in the Federal Register on December 4, 1998 (see 63 FR 67170). On March 4, 2002, the Committee for the Implementation of Textile Agreements (CITA) published a notice and letter to the Commissioner of Customs in the Federal Register allowing a grace period before imposing quota and visa requirements on goods described above that are exported before April 1, 2002, and entered for consumption or withdrawn from warehouse for consumption before June 1, 2002 (see 67 FR 9706). On March 22, 2002, CITA published a notice and letter to the Commissioner of Customs extending that grace period, exempting from export visa and quota requirements goods described above that are exported before June 1, 2002, and entered for consumption or withdrawn from warehouse for consumption before August 1, 2002. (see 67 FR 13318).

On June 3, after a review, the United States Government made a final decision that it would appeal the U.S. Court of International Trade's decision in the case of Rubies Costume Company v. United States. In view of that appeal, CITA has decided to direct the U.S. Customs Service to exempt imported textile costumes of the character covered by the Customs decision published in the Federal Register on December 4, 1998 from quota and visa requirements until further notice. CITA will revisit this issue when a decision on the appeal is issued.

EFFECTIVE DATE: June 25, 2002.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 20, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

This directive amends, but does not cancel, the directive issued to you on March 18, 2002 (67 FR 13318). In that directive, the Committee for the Implementation of Textile Agreements (CITA) extended a grace period on the export visa and quota requirements for the textile costumes of the character covered by the Customs decision published in the Federal Register on December 4, 1998 (see 63 FR 67170).

Effective on June 25, 2002, you are directed to exempt such textile costumes from quota and visa requirements until further notice. This exemption will be retroactive to cover such textile costumes exported between June 1, 2002 and the effective date of this directive.

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–15959 Filed 6–24–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46090]

Joint Order Granting the Modification of Listing Standards Requirements Under Section 6(h) of the Securities Exchange Act of 1934 and the Criteria Under Section 2(a)(1) of the Commodity Exchange Act

June 19, 2002.

The Commodity Futures Modernization Act of 2000 [1] (''CFMA''), which became law on December 21, 2000, lifted the ban on the trading of futures on single securities and on narrow-based security indexes (''security futures'') [2] in the United States. In addition, the CFMA established a framework for the joint regulation of these newly-permissible security futures products by the Commodity Futures Trading Commission (''CFTC'') and the Securities and Exchange Commission (''SEC'') (jointly, the ''Commissions''). Under the CFMA, national securities exchanges and national securities associations may trade security futures products if they register with the CFTC and comply with certain requirements of the Commodity Exchange Act (''CEA'').[3] Likewise, designated contract markets and registered derivatives transaction execution facilities (''DTEFs'') may trade security futures products if they register with the SEC and comply with certain other requirements of the Securities Exchange Act of 1934 (''Exchange Act'').[4]

As part of this new regulatory framework, the CFMA amended the Exchange Act and the CEA by, among other things, establishing the criteria and requirements for listing standards regarding the category of securities on which security futures products can be based. The Exchange Act [5] provides that it is unlawful for any person to effect transactions in security futures products that are not listed on a national securities exchange or a national securities association registered pursuant to section 15A(a) of the

[1] Pub. L. 106–554, 114 Stat. 2763 (2000).

[2] Section 6(h)(6) of the Exchange Act provides that options on security futures (''security futures products'') may not be traded until three years after the enactment of the CFMA and the determination jointly by the Securities and Exchange Commission and Commodity Futures Trading Commission to permit options on such futures. 15 U.S.C. 78f(h)(6).

[3] 7 U.S.C. 1 *et seq.*

[4] 15 U.S.C. 78a *et seq.*

[5] Section 6(h)(1) of the Exchange Act, 15 U.S.C. 78f(h)(1).

Exchange Act. The Exchange Act[6] further provides that such exchange or association is permitted to trade only security futures products that conform with listing standards filed with the SEC and that meet the criteria specified in section 2(a)(1)(D)(i) of the CEA.[7] Section 2(a)(1)(D)(i) of the CEA states that no board of trade shall be designated as a contract market with respect to, or registered as a DTEF for, any contracts of sale for future delivery of a security futures product unless the board of trade and the applicable contract meet the criteria specified in that section. Similarly, the Exchange Act[8] requires that the listing standards filed with the SEC by an exchange or association meet specified requirements.

In particular, the Exchange Act[9] and the CEA[10] require that, except as otherwise provided in a rule, regulation, or order, security futures must be based upon common stock and such other equity securities as the Commissions jointly determine appropriate.[11]

The Commissions have been asked to permit a national securities exchange, national securities association, designated contract market, or registered DTEF to list and trade a security future based on a share of an exchange-traded fund (''ETF''), a trust issued receipt (''TIR''), or a share of a registered closed-end management investment company (''Closed-End Fund'').[12] ETF shares, TIRs, and Closed-End Fund shares may not be common stock.[13] Accordingly, unless the Commissions jointly determine that ETF shares, TIRs, and Closed-End Fund shares are equity securities on which security futures may be based, futures on ETF shares, TIRs, and Closed-End Fund shares may not be eligible for listing and trading on a national securities exchange, national securities association, designated contract market, or registered DTEF because the requirement specified in section 6(h)(3)(D) of the Exchange Act and the criterion specified in section 2(a)(1)(D)(i)(III) of the CEA would not be satisfied.

Exchange-Traded Funds

An ETF is an investment company that is registered under the Investment Company Act of 1940 (''1940 Act'')[14] either as a unit investment trust (''UIT'') or as an open-end management investment company.[15] The fund itself issues shares only in large aggregate amounts, usually 50,000 shares (referred to as ''Creation Units'') at a price based on the net asset value (''NAV'') of the ETF's portfolio. These Creation Units are composed of individual shares (''ETF Shares'') that represent an ownership interest in the ETF's underlying portfolio of assets. ETFs do not redeem individual ETF Shares from holders at NAV.[16] Instead, an investor wishing to purchase or sell ETF Shares in an amount less than the size of a Creation Unit may do so in the secondary market. Because to date ETF Shares are listed and traded on national securities exchanges, they are registered under Section 12 of the Exchange Act.

Currently, all ETFs traded in the United States are based on specific domestic and foreign market indexes, most of which would not be considered to be a ''narrow-based security index'' under section 3(a)(55) of the Exchange Act and section 1a(25) of the CEA. An ETF seeks to track the performance of its benchmark index by holding in its portfolio either the contents of the index or a representative sample of the securities in the index. ETF Shares do not represent a direct ownership interest in the securities the ETF holds in its portfolio (rather, they represent a direct ownership interest in the fund itself) and do not provide for the ''delivery'' of the benchmark index. The holder of an ETF Share bears the risk that the performance of the ETF may not correspond exactly to the performance of the benchmark index, and the ETF Shares ultimately are tied in value to the fund's specific securities holdings rather than the value of the index.

Trust Issued Receipts

TIRs are securities representing beneficial ownership of the specific deposited securities represented by the receipts. Currently, Holding Company Depositary Receipts (''HOLDRs'') are the only TIRs listed and traded on national securities exchanges. Generally, HOLDRS represent an ownership interest in the underlying securities of the trust and are based on the securities of a particular industry. HOLDRS are not based on a particular benchmark index and do not track the performance of any index. The HOLDRS Trusts have not registered as investment companies under the 1940 Act.[17] TIRs generally are designed to allow investors to hold securities investments from a variety of companies in a single instrument that represents their beneficial ownership in the deposited securities. Beneficial owners have the same rights, privileges and obligations as they would have if they beneficially owned the deposited securities outside of the TIR program.[18] Holders of TIRs may cancel their TIRs at any time to receive the deposited securities. TIRs are registered under Section 12(b) of the Exchange Act.

Closed-End Funds

In contrast to an open-end management investment company that continuously offers redeemable shares, a Closed-End Fund is a management investment company that raises funds for investment by issuing a fixed number of non-redeemable shares through an initial public offering (''IPO'').[19] Following the IPO, investors

[6] Section 6(h)(2) of the Exchange Act, 15 U.S.C. 78f(h)(2).

[7] 7 U.S.C. 2(a)(1)(D)(i).

[8] Section 6(h)(3) of the Exchange Act, 15 U.S.C. 78f(h)(3).

[9] Section 6(h)(3)(D) of the Exchange Act, 15 U.S.C. 78f(h)(3)(D).

[10] Section 2(a)(1)(D)(i)(III) of the CEA, 7 U.S.C. 2(a)(1)(D)(i)(III).

[11] *See* Securities Exchange Act Release No. 44725 (August 20, 2001), in which the Commissions jointly issued an order permitting depositary shares to underlie a security future, and to be a component of a narrow-based security index, subject to certain conditions.

[12] *See* letter from Claire P. McGrath, Vice President and Deputy General Counsel, American Stock Exchange, to Catherine D. Dixon, Assistant Secretary, CFTC, and Jonathan G. Katz, Secretary, SEC, dated December 13, 2001, and letter from David F. Harris, General Counsel, Nasdaq Liffe Markets, LLC, to Jean A. Webb, Secretary, CFTC, and Jonathan G. Katz, Secretary, SEC, dated June 7, 2002.

[13] A registered investment company formed as a corporation rather than as a business trust could issue common stock. Because section 6(h)(3)(D) of the Exchange Act and section 2(a)(1)(D)(i)(III) of the CEA permit the listing of security futures products based on common stock, a security futures product could be based on the common stock of a registered management investment company without a joint order modifying the requirement of section 6(h)(3) of the Exchange Act and the criterion of section 2(a)(1)(D)(i)(III) of the CEA.

[14] 15 U.S.C. 80a–1 *et. seq.*

[15] Section 4(2) of the 1940 Act defines a UIT as an investment company that is organized under a trust indenture or similar instrument, that does not have a board of directors, and that issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities. 15 U.S.C. 80a–4(2). Section 5(a)(1) of the 1940 Act defines an open-end company as an investment company that is a management company which offers or has outstanding any redeemable security of which it is an issuer. 15 U.S.C. 80a–5(a)(1).

[16] The NAV of a share of an investment company is equal to the value of the investment company's total assets, minus liabilities, divided by the number of outstanding shares.

[17] The SEC's Division of Investment Management indicated that it would not recommend enforcement action if the HOLDRS Trust did not register as an investment company under the 1940 Act. See letter from Veena K. Jain, Staff Attorney, Division of Investment Management, SEC, to Merrill Lynch, Pierce, Fenner & Smith Incorporated, dated September 3, 1999.

[18] For example, beneficial owners have the right to instruct the trustee to vote the deposited securities, to receive reports, proxies and other information distributed by the issuers of the deposited securities to their security holders, and to receive dividends and other distributions if any are declared and paid by the issuers of the deposited securities to the trustee.

[19] Section 5(a)(2) of the 1940 Act defines a ''closed-end company'' as ''any management company other than an open-end company.'' Section 5(a)(1) of the 1940 Act defines an ''open-end company'' as ''a management company which is offering for sale or has outstanding any redeemable security for which it is the issuer.'' 15 U.S.C. 80a–5(a)(1) and (2).

may purchase and sell Closed-End Fund shares in secondary market transactions only. A registered investment adviser manages the assets of a Closed-End Fund consistent with the fund's objectives and policies, and a Closed-End Fund may invest in a variety of financial instruments. In addition to funds comprised of domestic securities, Closed-End Funds include funds that invest in securities of issuers located in a particular foreign country, a particular geographic region, or throughout the world. Shares of Closed-End Funds (''Closed-End Funds Shares'') are listed and traded on national securities exchanges.

Discussion

Section 6(h)(4) of the Exchange Act [20] and section 2(a)(1)(D)(v)(I) of the CEA [21] provide that the Commissions, by rule, regulation, or order, may jointly modify the listing standards requirement specified in sections 6(h)(3)(D) of the Exchange Act, and the criterion specified in sections 2(a)(1)(D)(i)(III) of the CEA to the extent the modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors. For the reasons discussed below, the Commissions believe that the joint modification of the requirement specified in Section 6(h)(3)(D) of the Exchange Act and the criterion specified in Section 2(a)(1)(D)(i)(III) of the CEA to permit an ETF Share, TIR, or Closed-End Fund Share to underlie a security future will foster the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

Because ETF Shares, TIRs, and Closed-End Fund Shares are registered under section 12 of the Exchange Act, an investor effecting a transaction in ETF Shares, TIRs, or Closed-End Fund Shares, or futures thereon, would have publicly available information about the ETF, TIR, or Closed-End Fund prior to making an investment decision. In addition, the listing and trading of security futures based on ETF Shares, TIRs, and Closed-End Fund Shares will make additional products available to market participants. The Commissions note that the combined assets of ETFs and Closed-End Funds, respectively, are significant and that futures on ETF Shares and Closed-End Fund Shares will provide investors with additional means to hedge positions in these products.[22] In addition, the conditions imposed by the Commissions, which are set forth below, will help to ensure that only liquid, widely-held ETF Shares, TIRs, and Closed-End Fund Shares will be eligible to underlie security futures contracts, and that therefore the futures will not be readily susceptible to manipulation. Therefore, the Commissions believe that it would foster the development of fair and orderly markets in security futures products, would be necessary or appropriate in the public interest, and would be consistent with the protection of investors to modify by joint order the listing standards requirements specified in subparagraph (D) of Exchange Act Section 6(h)(3) and subclause (III) of Section 2(a)(1)(D)(i) of the CEA, to permit, in certain specified circumstances, a national securities exchange, national securities association, designated contract market, or registered DTEF to list and trade security futures products based on an ETF Share, TIR, or Closed-End Fund Share.[23]

For these reasons, the Commissions by order are jointly modifying the requirement specified in section 6(h)(3)(D) of the Exchange Act and the criterion specified in section 2(a)(1)(D)(i)(III) of the CEA to permit an ETF Share, TIR, or Closed-End Fund Share to underlie a security future, provided that:

(1) The underlying ETF Shares, TIRs, or Closed-End Fund Shares are registered under Section 12 of the Exchange Act, and are listed and traded on a national securities exchange or through the facilities of a national securities association and reported as national market system securities as set forth in Rule 11Aa3–1 under the Exchange Act;[24]

(2) There are a minimum of 7,000,000 of such ETF Shares, TIRs, or Closed-End Fund Shares that are owned by persons other than those required to report their security holdings under Section 16(a) of the Exchange Act;

(3) Total trading volume in the ETF Shares, TIRs, or Closed-End Fund Shares has been at least 2,400,000 shares in the preceding 12 months;

(4) The market price per share of the ETF or Closed-End Fund, or per TIR, has been at least $7.50 for the majority of business days during the three calendar months preceding the date the national securities exchange, national securities association, designated contract market, or registered DTEF lists the overlying future, as measured by the lowest closing price reported in any market in which the ETF Shares, TIRs, or Closed-End Fund Shares traded on each of the subject days; and

(5) The issuer of the ETF, TIR, or Closed-End Fund is in compliance with all applicable requirements of the Exchange Act.

Accordingly,

It is ordered, pursuant to section 6(h)(4) of the Exchange Act and section 2(a)(1)(D)(v)(I) of the CEA, that the requirement specified in section 6(h)(3)(D) of the Exchange Act and the criterion specified in Section 2(a)(1)(D)(i)(III) are modified, subject to the conditions set forth above, *provided however,* this order does not affect the CFTC's exclusive jurisdiction under section 2(a)(1)(C) of the CEA over any futures contract based on an index that is not a ''narrow-based security index,'' as defined in section 3(a)(55) of the Exchange Act and section 1a(25) of the CEA. Accordingly, nothing in this order shall affect or limit the exclusive authority and jurisdiction of the CFTC with respect to any futures contract, now or in the future, including the CFTC's authority to approve any futures contract that is based upon an index that is not a ''narrow-based security index,'' including an index that is not a ''narrow-based security index'' that underlies an ETF, TIR or Closed-End Fund on which approved security futures are based.

By the Commodity Futures Trading Commission.

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[20] 15 U.S.C. 78f(h)(4).

[21] 7 U.S.C. 2(a)(1)(D)(v)(I).

[22] For example, as of January 2002, the combined assets of the 102 U.S. ETFs amounted to $82 billion. *See* Investment Company Institute, ''Exchange-Traded Fund Assets, January 2002'' at *http://www.ici.org/facts—figures/.* As of December 2000, the total assets invested in closed-end funds amounted to $134.5 billion. *See* ''Closed-End Fund Assets, Year-End 2000'' at *http://www.ici.org/facts—figures/.*

[23] A national securities exchange, national securities association, designated contract market or registered DTEF that relies on this order to list and trade a security futures product based on an ETF Share, TIR, or Closed-End Fund Share must comply with the other requirements and criteria specified in the Exchange Act and the CEA, respectively, and the listing standards requirements of the national securities exchange or national securities association.

[24] Accordingly, this order does not include certain closed-end funds known as ''interval funds'' that operate pursuant to Rule 23c–3 under the 1940 Act and are not listed on a national securities exchange or traded through the facilities of Nasdaq. In addition, this order does not include closed-end funds with a quarterly tender offer feature that are not listed on a national securities exchange or traded through the facilities of Nasdaq.

Dated: June 19, 2002.

Jean A. Webb,

Secretary,

By the Securities and Exchange Commission.

Dated: June 19, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–15919 Filed 6–24–02; 8:45 am]

BILLING CODE 8010–01–P; 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Board Closed Meeting

AGENCY: Defense Intelligence Agency, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Advisory Board has been scheduled as follows:

DATES: June 25 & 26 (8:30 a.m. to 5 p.m.).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria J. Prescott, Director/Executive Secretary, DIA Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings and discuss several current critical intelligence issues in order to advise the Director, DIA.

Dated: June 19, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–15953 Filed 6–24–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Department of the Army is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 25, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0210–7a TAPC

SYSTEM NAME:

Vendor Misconduct/Fraud/Mismanagement Information Exchange Program (May 11, 1998, 63 FR 25840).

Reason: The Department of the Army no longer collects and maintains this type of record. Records have been destroyed.

[FR Doc. 02–15914 Filed 6–24–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The amendment clarifies that information maintained in this system of records has been used to provide notification to as the emergency contact in the event of an emergency or death of the employee.

DATES: This proposed action would be effective without further notice on July 25, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

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The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0690–200 TAPC

SYSTEM NAME:

Department of the Army Civilian Personnel Systems (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Current and former Army civilian employees (appropriated and in some instances, non-appropriated funded employees), their dependents, foreign nationals, and military personnel who participate in the incentive awards and training programs.'

CATEGORIES OF RECORDS IN THE SYSTEM:

After 'home address' add 'home telephone number or alternate number,

emergency contact and next of kin information; beneficiary information;'
* * * * *

PURPOSE(S):

Add to the end of the entry 'and in the event of an emergency or death of the employee to provide notification to the emergency contact.'
* * * * *

STORAGE:

Delete entry and replace with 'Paper records in file folders and on electronic storage media.'
* * * * *

A0690–200 TAPC

SYSTEM NAME:

Department of the Army Civilian Personnel Systems.

SYSTEM LOCATION:

Office of Assistant G–1 for Civilian Personnel Policy, ATTN: DAPE–CP–PPD, 2461 Eisenhower Avenue, Alexandria, VA 22331–1300. Derivative Systems are maintained at commands, installations and activities dependent on the type of system maintained. Command-wide systems are the Civilian Personnel Accounting System at U.S. Army Military District of Washington, the U.S. Army Corps of Engineers Management Information System, and the Personnel Management Information System of U.S. Army Materiel Command. Official mailing addresses may be obtained from the Office of Assistant G–1 for Civilian Personnel Policy, ATTN: DAPE–CP–PPD, 2461 Eisenhower Avenue, Alexandria, VA 22331–1300.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Army civilian employees (appropriated and in some instances, non-appropriated funded employees), their dependents, foreign nationals, and military personnel who participate in the incentive awards and training programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of automated and non-automated personnel record, such as academic disciple; career program; citizenship; date of birth; educational level; employee tenure; Federal Employees Group Life Insurance; functional classification; name of employee; nature of action; occupational series; pay basis, pay plan, rate determinant; physical handicap; position occupied and tenure; military status; salary; service computation date; sex; Social Security Number; special program identifier; step or rate; submitting office number; training data, including costs, non-duty hours, on-duty hours, principal purpose, special interest program, date of completion; type of appointment; unit identification code; veterans preference; work schedule; organizational and position data, retention data; adverse action data; Fair Labor Standards Act coverage; cost of living allowances; transportation entitlement; cost codes; leave category; salary history; wage area; position sensitivity; security investigation data; security clearance and access data; performance/suggestion/cash awards; reemployment rights; training agreement; reserve status; vessel operations qualifications; Government driver's license; food handler's permit; intern recruitment and training data; career management data including performance/potential ratings; employee evaluation; qualifications; achievements; dependent data; overseas sponsor information; state address; home address; home telephone number or alternate number, emergency contact and next of kin information; beneficiary information; leave data; foreign language code, mobilization designee tracking. Records are maintained for military personnel participating in department-wide incentive awards and training programs sponsored by operating civilian personnel offices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 690–200, General Personnel Provisions; and E.O. 9397 (SSN).

PURPOSE(S):

Information in this system is used by civilian personnel offices to screen qualifications of employees; determine status, eligibility, and employee's rights, and benefits under pertinent laws and regulations governing Federal employment; compute length of service; compile reports and statistical analyses of civilian work force strength trends, accounting, and composition; and to provide personnel services; and in the event of an emergency or death of the employee to provide notification to the emergency contact.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Department of Labor, Department of Veterans Affairs, Social Security Administration, or a national, State, county, municipal, or other publicly recognized charitable or income security administration agency (e.g., state unemployment compensation agencies), where necessary to adjudicate a claim under Office of Personnel Management's retirement, insurance, or health benefits program or to conduct an analytical study or audit of benefits being paid under such programs.

Office of Federal Employees Group Life Insurance, information necessary to verify election, declination, or waiver or regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

Health insurance carriers contracting with Office of Personnel Management to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or audit of benefit provisions of such contracts. Federal, State, or local agencies for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

Officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

Public and private organizations, including news media, which grant or publicize awards and/or honors, information on individuals considered/selected for incentive awards and other honors.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By Social Security Number and/or name.

SAFEGUARDS:

Computer facilities and terminals are located in restricted areas accessible only to authorized personnel who are properly screened, cleared, and trained. Manual records, microfilm/fiche, and

computer printouts are stored in locked rooms or cabinets on military installations or in buildings secured by guards.

RETENTION AND DISPOSAL:

These records are retained for varying periods of time. Generally, they are maintained for a minimum of 1 year or until the employee transfers or separates. They may also be retained indefinitely as a basis for longitudinal work history statistical studies.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant G–1 for Civilian Personnel Policy, ATTN: DAPE–CP–PPD, 2461 Eisenhower Avenue, Alexandria, VA 22331–1300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the servicing civilian personnel office. Official mailing addresses may be obtained from the Office of Assistant G–1 for Civilian Personnel Policy, ATTN: DAPE–CP–PPD, 2461 Eisenhower Avenue, Alexandria, VA 22331–1300.

Written requests must contain the individual's full name, home address, Social Security Number, current or last dates of federal employment, date and place of birth, and must be signed by the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the servicing civilian personnel office. Official mailing addresses may be obtained from the Office of Assistant G–1 for Civilian Personnel Policy, ATTN: DAPE–CP–PPD, 2461 Eisenhower Avenue, Alexandria, VA 22331–1300.

Written requests must contain the individual's full name, home address, Social Security Number, current or last dates of federal employment, date and place of birth, and must be signed by the individual.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and from the individual's official personnel file.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–15915 Filed 6–24–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 25, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: June 19, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Academic Libraries Survey: 2002–2005.

Frequency: Biennially.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 3,400.

Burden Hours: 5,950.

Abstract: The Academic Libraries Survey has been a component of the Integrated Postsecondary Education Data System. In 2002 and henceforth it will be a separate survey. Changes to the survey itself are minor from prior collections of this universe survey. The data are collected on the web and consist of information about library holdings, library staff, library services and usage, library technology, library budget and expenditures.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2012. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her Internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–15930 Filed 6–24–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132C]

Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: This program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) consistent with the State plan for establishing a statewide network of centers.

Eligible Applicants: To be eligible to apply, an applicant must—(a) Be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency that is designed and operated within a local community by individuals with disabilities and provides an array of independent living services; (b) have the power and authority to meet the requirements in 34 CFR 366.2(a)(1); (c) be able to plan, conduct, administer, and evaluate a center consistent with the requirements in subparts F and G of 34 CFR part 366; and (d) either—(1) Not currently be receiving funds under part C of chapter 1 of title VII of the Act; or (2) propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) at a different geographical location. Eligibility under this competition is limited to entities proposing to serve areas that are unserved or underserved in the States and territories listed under *Available Funds and Estimated Number of Awards.*

Applications Available: June 25, 2002.

Deadline for Transmittal of Applications: August 1, 2002.

Deadline for Intergovernmental Review: September 30, 2002.

Estimated Available Funds: $1,252,125.00.

Estimated Number of Awards: 27, distributed in the following manner:

Eligible entities	Available funds	Estimated number of awards
American Samoa	$154,046	1
Florida	150,000	1
Georgia	124,113	1
Illinois	135,164	6
Indiana	65,306	3
Kansas	35,448	1
Nevada	35,448	1
Ohio	94,700	1
Oregon	29,337	1
Pennsylvania	133,490	1
Puerto Rico	12,492	1
South Dakota	35,448	1
Texas	200,000	1
Utah	11,816	2
Wisconsin	35,317	5

Estimated Range of Awards: $5,908 to $200,000.

Estimated Average Size of Awards: $46,375.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department, General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86. (b) The regulations for this program in 34 CFR parts 364 and 366.

Priority

Competitive Preference Priority:

We give preference to applications that meet the competitive preference priority in the notice of final competitive preference for this program, published in the **Federal Register** on November 22, 2000 (65 FR 70408). Under 34 CFR 75.105(c)(2)(i), up to 10 points may be earned based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities as project employees in projects awarded in this competition. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities. Therefore, within this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the selection criteria in 34 CFR 366.27, for a total possible score of 110 points.

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs via its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.132C.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: James Billy, U.S. Department of Education, 400 Maryland Avenue, SW., room 3326, Switzer Building, Washington, DC 20202–2741. Telephone: (202) 205–9362. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 29 U.S.C. 796a, 796f, 796f–1, and 796f–4.

Dated: June 17, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–16027 Filed 6–24–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1572–000]

Bayou Cove Peaking Power, LLC; Notice of Issuance of Order

June 18, 2002.

Bayou Cove Peaking Power, LLC (Bayou Cove) filed an application requesting authority to engage in the sale of electric energy and capacity at market-based rates, and the resale of transmission rights. Bayou Cove also requested waiver of various Commission regulations. In particular, Bayou Cove requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Bayou Cove.

On June 14, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Bayou Cove should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Bayou Cove is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Bayou Cove, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Bayou Cove's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 15, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15924 Filed 6–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1756–000]

LG&E Capital Trimble County LLC; Notice of Issuance of Order

June 18, 2002.

LG&E Capital Trimble County LLC (LG&E Capital) filed an application requesting authority to engage in the sale of energy, capacity and ancillary services at market-based rates, and the reassignment of transmission capacity. LG&E Capital also requested waiver of various Commission regulations. In particular, LG&E Capital requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by LG&E Capital.

On June 14, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by LG&E Capital should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, LG&E Capital is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of LG&E Capital, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of LG&E Capital's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 15, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15925 Filed 6–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–40–030]

Panhandle Eastern Pipe Line Company; Notice of Refund Report

June 18, 2002.

Take notice that on May 20, 2002, Panhandle Eastern Pipe Line Company (PEPL) tendered for filing its 2002 Kansas Ad Valorem Tax Annual Report in the above-referenced docket pursuant to the Stipulation and Agreement (Settlement) filed with the Commission on June 22, 2001 in Docket No. RP98–40–000, *et al.,* for which the Commission issued an Order Approving Settlement on September 13, 2001, effective October 15, 2001. On December 28, 2001, PEPL refunded to its jurisdictional customers their allocated share of the refunds of Kansas ad valorem taxes received from PEPL's producer suppliers in accordance with such Settlement. On January 25, 2002, PEPL submitted a Refund Report, with work papers and supporting documentation for the allocation of refunds to its Jurisdictional Customers. PEPL's Refund Report was accepted by the Commission on March 7, 2002.

PEPL states that Schedule 1 to its filing shows the Non-Settling First Sellers that have not provided refunds of Kansas ad valorem taxes under the Settlement. Schedule 2 shows the calculation of interest from February 1, 2001 through March 31, 2002 for each Non-Settling First Seller. Updated interest has been calculated in

accordance with Section 154.501(d) of the Commission's Regulations. Schedule 3, Page 1 shows certain First Sellers refund amounts related to Missouri Public Service Commission's (MoPSC) election to opt-out with respect to discrete portions of the Settlement. One of the MoPSC opt-out related First Sellers, Dorchester Hugoton LTD., has paid its refund amount to PEPL. Due to its small size, PEPL is holding this amount pending resolution of the other Working Interest Owner refunds. Schedule 3, Page 2 reflects additional interest that has accumulated through March 31, 2002.

PEPL states that copies of its filing have been provided to all parties and respective State Regulatory 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 on or before July 9, 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 be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15927 Filed 6–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–384–000]

Puget Sound Energy, Inc.; Notice of Request Under Blanket Authorization

June 18, 2002.

Take notice that on June 10, 2002, Puget Sound Energy, Inc. (Puget), One Bellevue Center Building, 411 108th Avenue, NE., Bellevue, Washington 98004–5515, filed in Docket No. CP02–384–000 a request pursuant to Sections 157.205 and 157.214 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.214) for authorization to increase the certificated maximum storage capacity, cushion gas inventory and maximum working gas quantity at the Jackson Prairie Storage Project (Jackson Prairie), in Lewis County, Washington, under Puget's blanket certificate issued in Docket No. CP97–27–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is 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 #'' from the RIMS Menu and follow the instructions (please call 202–208–2222 for assistance).

Puget proposes to implement a phased water withdrawal/gas injection program during the 2002–2008 period that is designed to increase the maximum certificated storage capacity at Jackson Prairie from 39.4 Bcf to 47.8 Bcf, the certificated cushion gas inventory from 19.0 Bcf to 23.2 Bcf and the maximum certificated working gas quantity from 18.3 Bcf to 24.6 Bcf. Puget states that its proposal does not request any change in the currently authorized maximum storage pressures. In addition, Puget states that its proposal does not involve the construction of any additional facilities, since existing water withdrawal facilities and gas injection facilities will be used to expand the Jackson Prairie Zone 2 reservoir.

Puget, Arista Corporation and Northwest Pipeline Corporation jointly own equal undivided one-third shares of Jackson Prairie and will have the right, but not the obligation, to participate equally in development of the proposed expansion capacity. Puget states that each owner will make an annual election concerning its participation in the subsequent year's expansion water withdrawal/gas injection cycle.

The requested expansion is based on Puget's analysis that the reservoir capacity can be safely increased to accommodate the three owners' needs for additional storage in the Pacific Northwest.

Any questions regarding the prior notice request should be directed to Gary K. Otter, Manager, PO. Box 58900, Salt Lake City, Utah 84158, at (801) 584–7117.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15923 Filed 6–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1884–000; and ER02–1885–000]

Waterside Power, L.L.C., Power Development Company, L.L.C.; Notice of Issuance of Order

June 18, 2002.

Waterside Power, L.L.C. (Waterside) and Power Development Company, L.L.C. (PDC) filed respective applications with accompanying tariffs requesting authority to engage in the sales energy, capacity, and ancillary services at market-based rates, and for the reassignment of transmission capacity. Waterside and PDC also requested waiver of various Commission regulations. In particular, Waterside and PDC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Waterside and PDC.

On June 13, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Waterside or PDC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period,

Waterside and PDC are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Waterside or PDC, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Waterside's or PDC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 15, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15926 Filed 6–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–52–044]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Refund Report

June 18, 2002.

Take notice that on May 24, 2002, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing its report of activities during the past year regarding collection of Kansas ad valorem tax refunds.

Williams states that this filing is being made in compliance with Commission order issued September 10, 1997 in Docket Nos. RP97–369–000, et al. The September 10 order requires first sellers to make refunds for the period October 3, 1983 through June 28, 1988. The Commission also directed that pipelines file a report annually concerning their activities to collect and flow through refunds of the taxes at issue.

Williams states that a copy of this filing was served on all parties included on the official service list maintained by the Secretary 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 on or before July 9, 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 be viewed on the Web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15928 Filed 6–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–150–000, et al.]

Creed Energy Center, LLC, et al.; Electric Rate and Corporate Regulation Filings

June 18, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Creed Energy Center, LLC

[Docket No. EG02–150–000]

Take notice that on June 13, 2002, Creed Energy Center, LLC (Creed) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Creed, a Delaware limited liability company, proposes to own and operate a nominally rated 45 MW natural gas-fired, simple cycle electric generating facility to be located in Solano County, California. Creed intends to sell the output at wholesale to an affiliated marketer.

Comment Date: July 9, 2002.

2. Lambie Energy Center, LLC

[Docket No. EG02–151–000]

Take notice that on June 13, 2002, Lambie Energy Center, LLC (Lambie) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Lambie, a Delaware limited liability company, proposes to own and operate a nominally rated 45 MW natural gas-fired, simple cycle electric generating facility to be located in Solano County, California. Lambie intends to sell the output at wholesale to an affiliated marketer.

Comment Date: July 9, 2002.

3. Goose Haven Energy Center, LLC

[Docket No. EG02–152–000]

Take notice that on June 13, 2002, Goose Haven Energy Center, LLC (Goose Haven) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Goose Haven, a Delaware limited liability company, proposes to own and operate a nominally rated 45 MW natural gas-fired, simple cycle electric generating facility to be located in Solano County, California. Goose Haven intends to sell the output at wholesale to an affiliated marketer.

Comment Date: July 9, 2002.

4. Feather River Energy Center, LLC

[Docket No. EG02–153–000]

Take notice that on June 13, 2002, Feather River Energy Center, LLC (Feather River) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Feather River, a Delaware limited liability company, proposes to own and operate a nominally rated 45 MW natural gas-fired, simple cycle electric generating facility to be located in Sutter County, California. Feather River intends to sell the output at wholesale to an affiliated marketer.

Comment Date: July 9, 2002.

5. Dearborn Industrial Generation, L.L.C.

[Docket Nos. ER02–1689–001]

Take notice that on June 12, 2002 Dearborn Industrial Generation, L.L.C. (DIG) tendered for filing with the Federal Energy Regulatory Commission (Commission), an amendment to its filing in this docket.

DIG intends to make sales of ancillary services at market-based rates, in addition to engaging in electric power and energy purchases and sales at market-based rates, which were previously authorized by FERC on February 27, 2001. The amendment makes changes to DIG's filing in accordance with the Commission's May 31, 2002 order herein.

Comment Date: July 3, 2002.

6. California Independent System Operator Corporation

[Docket No. ER02–2010–001]

Take notice that on June 11, 2002, the California Independent System Operator Corporation, (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), an errata to its June 3, 2002 filing of a Meter Service Agreement for ISO Metered Entities between the ISO and Energia de Baja California, S. de R. L. de C.V. for acceptance by the Commission.

The ISO states that this filing has been served on Energia de Baja California, S. de R. L. de C.V. and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective May 29, 2002.

Comment Date: July 2, 2002.

7. Alcoa Power Marketing, Inc.

[Docket No. ER02–2074–000]

Take notice that on June 12, 2002, Alcoa Power Marketing, Inc. (APMI) tendered for filing with the Federal Energy Regulatory Commission (Commission), an application for authority to sell electric energy, capacity and certain ancillary services at market-based rates under Section 205(a) of the Federal Power Act, 16 U.S.C. 824d(a), and accompanying requests for certain blanket approvals and for the waiver of certain Commission regulations. APMI also seeks authorization to reassign any transmission rights it may obtain. APMI requests that the Commission accept its Original Rate Schedule FERC No. 1 for filing.

Comment Date: July 3, 2002.

8. Genesee Power Station Limited Partnership

[Docket No. ER02–2075–000]

Take notice that on June 12, 2002, Genesee Power Station Limited Partnership (Genesee) tendered for filing a Rate Schedule with Consumers Energy Company (Consumers) for a Power Purchase Agreement (designated Genesee Power Station Limited Partnership FERC Electric Rate Schedule No. 1). The Rate Schedule reflects the terms of Amendment No. 1, No. 2 and No. 3 to the original Rate Schedule. Genesee requests a November 28, 2001 effective date for Amendment No. 1, a December 19, 2001 effective date for Amendment No. 2, and a January 23, 2002 effective date for Amendment No. 3.

Copies of the filing were served upon the Consumers.

Comment Date: July 3, 2002.

9. Xcel Energy Services, Inc.

[Docket No. ER02–2076–000]

Take notice that on June 12, 2002 Xcel Energy Services, Inc. (XES), on behalf of Southwestern Public Service Company (SPS), submitted for filing Experimental Sales Riders between SPS and Central Valley Electric Cooperative, Inc.; Lyntegar Electric Cooperative, Inc.; Farmers' Electric Cooperative, Inc.; Roosevelt County Electric Cooperative, Inc.; and Cap Rock Electric Cooperative, Inc. (d/b/a New Corp Resources, Inc.)

XES requests that these agreements become effective on April 1, 2002.

Comment Date: July 3, 2002.

10. Ohio Valley Electric Corporation Indiana-Kentucky Electric Corporation

[Docket No. ER02–2077–000]

Take notice that on June 12, 2001, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC) tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated May 15, 2002 (the Service Agreement) between NRG Power Marketing, Inc. (NRG Power) and OVEC. OVEC proposes an effective date of May 15, 2002 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to NRG Power.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

A copy of this filing was served upon NRG Power.

Comment Date: July 3, 2002.

11. Carolina Power & Light Company

[Docket No. ER02–2078–000]

Take notice that on June 12, 2002, Carolina Power & Light Company (CP&L) tendered for filing an executed long-term Service Agreement between CP&L and the following eligible buyer, The City of Seneca, SC. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 5.

CP&L requests an effective date of May 16, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: July 3, 2002.

12. Duke Energy Corporation

[Docket No. ER02–2079–000]

Take notice that on June 12, 2002, Duke Energy Corporation (Duke), on behalf of Duke Power and Duke Electric Transmission (Duke ET), tendered for filing with the Federal Energy Regulatory Commission (Commission), (1) an executed Service Agreement for Network Integration Transmission Service (NITSA), dated March 14, 1997 and amended May 16, 2002, between Duke Power, on its own behalf and acting as agent for Nantahala Power and Light Company (Nantahala), and the City of Seneca, South Carolina (Seneca); (2) revised Specifications for Network Integration Transmission Service under the NITSA; (3) an executed Network Operating Agreement (NOA) between Duke ET and Seneca; Seneca, and Southern Company Services, Inc., acting as agent for Seneca, which was inadvertently omitted from Duke Power's Offer of Partial Settlement filed in Docket Nos. ER97–2099–000 AND ER97–2212–000 on August 4, 1997. Duke seeks an effective date of May 16, 2002, for the NITSA and the NOA.

Comment Date: July 3, 2002.

13. Ocean Peaking Power, L.P.

[Docket No. ER02–2080–000]

Take notice that on June 12, 2002, Ocean Peaking Power, L.P. (OPP) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act, and part 35 of the Commission's regulations, a petition for authorization to make sales of electric capacity, energy and certain ancillary services at market-based rates, and for certain waivers and blanket approvals and authorizations of the Commission's regulations typically granted to entities with market-based rate authorization.

Comment Date: July 3, 2002.

14. New York Independent System Operator, Inc.

[Docket No. ER02–2081–000]

Take notice that on June 12, 2002, the New York Independent System Operator, Inc. (NYISO), filed with the Federal Energy Regulatory Commission

(Commission), proposed amendments to the NYISO's Market Administration and Control Area Services Tariff (Services Tariff) and its Open Access Transmission Tariff (OATT) to more fully describe the current method by which the NYISO calculates the price of Energy with respect to Fixed Block Units.

The NYISO is requesting an effective date of May 1, 2001, for its proposed amendments. In the event that the Commission does not accept the NYISO's requested effective date of May 1, 2001, then the NYISO is requesting that the Commission defer the effective date of its Order Accepting Compliance Filing Subject to Conditions and Denying Motion for Clarification, issued on April 29, 2002, until 90 days after issuing its order in the present matter. The NYISO also filed additional proposed amendments to its Services Tariff and OATT that, should the Commission deem them necessary, would modify the NYISO's current price calculation methodology with respect to Fixed Block Units. In the event that the Commission accepts the NYISO's additional proposed amendments, the NYISO requests an effective date for those amendments of 90 days from the date of the Commission's order.

A copy of this filing was served upon all signatories of the NYISO OATT and Services Tariff.

Comment Date: July 3, 2002.

15. Rainy River Energy Corporation

[Docket No. ER02–2082–000]

Take notice that on June 12, 2002, the Rainy River Energy Corporation (RREC) filed with the Federal Energy Regulatory Commission (Commission) a Long-Term Capacity and Energy Purchase Contract between RREC and Wisconsin Public Power Inc.; a Long-Term Capacity and Energy Purchase Contract between RREC and Madison Gas and Electric Company; and an EEI Master Power Purchase and Sale Agreement and Transaction Confirmation for the sale of 80 MW for 12.5 months to Wisconsin Electric Power Company to be effective May 1, 2002.

Comment Date: July 3, 2002.

16. Ohio Valley Electric Corporation

[Docket No. ER02–2084–000]

Take notice that on June 12, 2002, Ohio Valley Electric Corporation (OVEC) tendered for filing a Notice of Cancellation of the Non-Firm Point-to-Point Transmission Service Agreement, dated as of February 27, 1997 between OVEC and Koch Energy Trading, Inc. (Koch), designated as Service Agreement No. 16 under OVEC's FERC Electronic Tariff, Original Volume No. 1. OVEC proposes an effective date of August 12, 2002.

A copy of this filing was served upon Koch and the Public Utilities Commission of Ohio.

Comment Date: July 3, 2002.

17. Northern Iowa Windpower II LLC

[Docket No. ER02–2085–000]

Take notice that on June 12, 2002, Northern Iowa Windpower II LLC (Northern Iowa) petitioned the Federal Energy Regulatory Commission (Commission) for authority to sell electricity at market-based rates under Section 205(a) of the Federal Power Act, 16 U.S.C. 824d(a); for the granting of certain blanket approvals and for the waiver of certain Commission regulations. Northern Iowa is a limited liability company that proposes to engage in the wholesale sale of electric power in the state of Iowa.

Comment Date: July 3, 2002.

17. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–2086–000]

Take notice that on June 12, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral Service Sales Agreement between Companies and Northern States Power Company under the Companies' Rate Schedule MBSS.

Comment Date: July 3, 2002.

19. Aquila, Inc.

[Docket No. ES02–45–000]

Take notice that on June 11, 2002, Aquila, Inc. (Aquila) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue no more than 9 million shares of common stock pursuant to the Aquila, Inc. 2002 Omnibus Incentive Compensation Plan.

Aquila also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: July 9, 2002.

Standard Paragraph

E. 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 z*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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15956 Filed 6–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RT01–99–000, 001, 002 003, RT01–87–000, RT01–95–000, 001, 002, RT01–86–000, 001, 002, RT01–2–000, 001, 002, 003, RT01–98–000, and EL02–65–000]

Regional Transmission Organizations, Midwest Independent System Operator, New York Independent System Operator, Inc., Bangor Hydro-Electric Company, PJM Interconnection, L.L.C., PJM Interconnection, L.L.C., Alliance Companies; Notice of Request for Comments on Timeline and Report by the Northeast Independent System on Seams Resolution

June 18, 2002.

At the meeting of the Federal Energy Regulatory Commission on June 12, 2002, the Midwest, New England, New York, and PJM independent system operators gave a presentation on their resolution of seams between markets. The Southwest Power Pool also attended the meeting. The New England, New York, and PJM independent system operators jointly submitted a timeline and report on their progress and plans for seams resolution. *See* Northeast ISO, ''Seams Resolution'' (2000–2004) (2002). *http://www.ferc.gov/calendar/commissionmeetings/Discussion_papers/06–12–02/A3-ne_iso_seams_resolution.pdf*; Northeast ISOs, Seams Resolution Report (2002) *http://www.ferc.gov/calendar/*

commissionmeetings/Discussion_papers/06–12–02/A3-SeamsDetProjListing061202.pdf. The Federal Energy Regulatory Commission requested that these independent system operators incorporate the views of state commissions into the seams resolution plan. Toward this end, the Federal Energy Regulatory Commission advised the independent system operators to coordinate their efforts with the states.

Additionally, the Federal Energy Regulatory Commission will receive comments from the public and, in particular, state commissions on the timeline and report of the New England, New York, and PJM independent system operators. Comments will be due on July 10, 2002. Comments may be filed electronically on the Internet at *www.ferc.fed.us* under the ''e-Filing'' link. *See* 18 CFR 385.2001–2005 (instructions for making filings with the Federal Energy Regulatory Commission). To file comments on paper, submit the original and fourteen copies to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

A revised timeline of seams resolution by the New England, New York, and PJM independent system operators will be presented at the meeting of the Federal Energy Regulatory Commission on July 17, 2002. We strongly advise state commissions to file their comments electronically because of the imminent date of this meeting.

For additional information, please contact: Steve Rodgers, (202) 208–1247, *Steve.Rodgers@ferc.gov*, or Douglas Matyas, (202) 208–0890 Douglas.Matyas@ferc.gov at the Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–15929 Filed 6–24–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7237–3]

Gulf of Mexico Program Meeting of the Policy Review Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Act, Public Law 92–463, EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Policy Review Board (PRB).

DATES: The PRB meeting will be held on Thursday, July 18, 2002, from 8 a.m. to 2:30 p.m.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, 315 Julia Street, New Orleans, Louisiana (504–525–1993).

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer , Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS, 39529–6000 at 228–688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda is attached.

The meeting is open to the public.

Dated: June 17, 2002.

Gloria D. Car,

Designated Federal Officer.

Gulf of Mexico Program—Policy Review Board Meeting, July 18, 2002, Embassy Suites Hotel, New Orleans, Louisiana

Purposes:

(1) To discuss the feasibility of developing recommendations requesting that the Administrator of EPA support a Presidential Executive Order establishing the Gulf of Mexico Program (GMP);

(2) To discuss and endorse actions proposed by the Management Committee to address mercury in Gulf fisheries;

(3) To discuss the role of the GMP in assisting Louisiana and the Army Corps of Engineers address coastal land loss and implement the Louisiana Coastal Assessment;

(4) To discuss the 2002 Farm Bill and opportunities for leveraging resources to support GMP objectives;

(5) To endorse Research Needs Assessment for the GMP; and

(6) To receive an update on Program progress and endorse out-year objectives.

Thursday, July 18

8:00 Welcome and Introductions, Jimmy Palmer, EPA Regional Administrator—Atlanta

8:15 EPA's Goals and Expectations for the Gulf of Mexico Program

Diane Regas, EPA Deputy Assistant Administrator for Water (Invited)

Jimmy Palmer, EPA Regional Administrator—Atlanta

Gregg Cooke, EPA Regional Administrator—Dallas

Purpose: Discuss EPA's expectations for the Program and transition to a new Director for the Gulf of Mexico Program Office.

9:00 GMP Environmental Objectives, Progress to Date, Performance Review, Bryon Griffith, GMPO

Purpose: Review fiscal year 2004 objectives; progress on FY 2002 objectives; provide brief overview of recommendations and changes resulting from the Management Committee's review of GMP performance; and discuss formation of independent Gulf of Mexico Regional Panel for aquatic nuisance species.

9:30 Presidential Executive Order for the Gulf of Mexico Program, Jim Giattina, GMPO

Purpose: Review the purpose and key elements of an Executive Order (EO) for the Program and discuss support for an EO and how it would reinforce efforts to engage the support and commitment of Federal agencies.

Decision: PRB discussion and agreement on next steps, regarding development of recommendations to the Administrator.

10:30 Break

10:45 Mercury in Gulf Seafood

Ron Lukens, Gulf States Marine Fisheries Commission

Fred Kopfler, GMPO

Spencer Garrett, National Marine Fisheries Service

Purpose: Identify key policy issues that will require the attention of the PRF as well as Important Federal and State actions that could result from the efforts underway to address public health concerns associated with mercury in Gulf seafood.

Decision: Endorsement of the GMP's course of action.

11:45 Break for Lunch

Lunch to be catered in

12:30 Louisiana Coastal Land Loss and Gulf Hypoxia, Len Bahr, Executive, Office of the Governor of Louisiana

Purpose: Presentation on the State's and the Army Corps of Engineers efforts to address coastal land loss through the Louisiana Coastal Assessment and linkages with efforts to address Gulf hypoxia.

Decision: Discussion of the appropriate role and activities for the GMP to undertake to support State efforts.

1:30 The 2002 Farm Bill, Ron Harrell, Louisiana Farm Bureau Federation

Purpose: Discussion of key provisions of the 2002 Farm Bill and how they may be leveraged to support GMP objectives.

2:00 Scientific Research Needs Assessment for the GMP, Jim Giattina

Purpose: Brief overview of Critical Scientific Research Needs Assessment for the Gulf of Mexico Program.

Decision: PRB endorsement of final document for printing and distribution.

2:15 Review Action Items, Bryon Griffith

2:30 Adjourn

[FR Doc. 02–16032 Filed 6–24–02; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report Nos. AUC–02–31–F and AUC–02–44–D; FCC 02–158]

Auction of Licenses in the 747–762 and 777–792 MHz Bands (Auction No. 31) Postponed Until January 14, 2003; Auction of Licenses in the 698–746 MHz Band (Auction No. 44) Will Proceed as Scheduled

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the postponement until January 14, 2003, of the auction of licenses in the 747–762 and 777–792 MHz band (Auction No. 31), previously scheduled to begin on June 19, 2002. The postponement is necessary to provide additional time for Congress to consider legislation affecting the timing of that auction and, accordingly, bidder preparation and planning.

DATES: Auction No. 31 is scheduled to begin on January 14, 2003.

FOR FURTHER INFORMATION CONTACT: Lisa Stover, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (717) 338–2888; or Howard Davenport, Legal Branch, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 31 Postponement Public Notice* released on May 24, 2002. The full text of this document, including statements by each Commissioner, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

The upcoming auction of licenses in the 747–762 and 777–792 MHz band (Auction No. 31), scheduled to begin on June 19, 2002, is postponed until January 14, 2003, in order to provide additional time for Congress to consider legislation affecting the timing of that auction and, accordingly, bidder preparation and planning. Pursuant to the previously announced schedules, the Commission computer system window to file short-form applications (FCC Form 175) to participate in Auction No. 31 closed at 6 p.m. ET on Wednesday, May 8, 2002. Any short-form applications to participate in Auction No. 31 that are in the system will be deemed ineffective and purged from the system seven (7) days after the release of the *Auction No. 31 Postponement Public Notice.* Any party will be able to submit a short-form application to participate in Auction No. 31 pursuant to the new schedule. Applicants wishing to participate pursuant to the new schedule must file in compliance with the deadlines listed. The new filing window for short-form applications to participate in Auction No. 31 will open on November 14, 2002.

The new schedule is as follows:

Filing Deadline for FCC Form 175: November 25, 2002; 6 p.m. ET.

Upfront Payment Deadline: December 13, 2002; 6 p.m. ET.

Mock Auction: January 9, 2002.

Auction Start Date: January 14, 2003.

The upcoming auction of licenses in the 698–746 MHz Band (Auction No. 44), scheduled to commence on June 19, 2002, will proceed as scheduled.

The Commission will memorialize its views supporting this decision in a separate opinion.

Action by the Commission on May 24, 2002, with Chairman Powell; Commissioners Abernathy and Copps issuing separate statements and Commissioner Martin approving in part, dissenting in part and issuing a statement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–15952 Filed 6–24–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Tenth Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–03 Advisory Committee will be held on July 22, 2002, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: July 22, 2002; 2 p.m.–4 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., 6th Floor South Conference Room (6–B516), Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the tenth meeting of the WRC–03 Advisory Committee. The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the tenth meeting is as follows:

Agenda

Tenth Meeting of the WRC–03 Advisory Committee Federal Communications Commission, 445 12th Street, SW., 6th Floor South Conference Room (6–B516), Washington, DC 20554

July 22, 2002; 2 p.m.–4 p.m.

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Ninth Meeting
4. Reports from regional WRC–03 Preparatory Meetings
5. NTIA Draft Preliminary Views and Proposals
6. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Don Abelson,

Chief, International Bureau.

[FR Doc. 02–15950 Filed 6–24–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 9, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Eugene Weinreis, Golva, North Dakota and Brian and Kimera Robertson, Missoula, Montana; to acquire control of Community First Bancorp Inc., Glendive, Montana, and thereby indirectly acquire control of Community First Bank of Glendive, Glendive, Montana.

2. Douglas H. Lewis, II, Duluth, Minnesota; to acquire control of the North Shore Financial Corporation, Duluth, Minnesota, and thereby indirectly to acquire control of North Shore Bank of Commerce, Duluth, Minnesota.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Bruce L. Bachman and Matthew C. Bachman, both of Centralia, Kansas; to acquire control of First Centralia Bancshares, Inc., Centralia, Kansas, and thereby indirectly acquire control of The First National Bank of Centralia, Centralia, Kansas; Onaga Bancshares, Inc., Merriam, Kansas, and thereby indirectly acquire control of First National Bank of Onaga, Onaga, Kansas; and Century Capital Financial, Inc., Kilgore, Texas, and thereby indirectly acquire control of Century Capital Financial, Inc., Wilmington, Delaware, and City National Bank, Kilgore, Texas.

Board of Governors of the Federal Reserve System, June 19, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–15933 Filed 6–24–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 19, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Richey Bancorporation, Inc., Glendive, Montana; to acquire 25 percent of the voting shares of Community First Bancorp, Inc., Glendive, Montana, and thereby indirectly acquire Community First Bank, Glendive, Montana.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. First Bancshares of Texas, Inc., Midland, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Midland Nevada Corp., Reno, Nevada, and thereby indirectly acquire First National Bank of Midland, Midland, Texas.

2. Horizons Bancorp, Inc., Monroe, Louisiana; to merge with American National Bancshares, Inc., Ruston, Louisiana, and thereby indirectly acquire American Bank, N.A., Ruston, Louisiana.

3. West Financial Inc., El Paso, Texas and Delaware West Financial, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Bank of the West, El Paso, Texas.

Board of Governors of the Federal Reserve System, June 19, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–15932 Filed 6–24–02; 8:45 am]

BILLING CODE 6210–01–S

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 Web site 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 July 9, 2002.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Pacific Coast Bankers' Bancshares, San Francisco, California; to engage in securities brokerage activities by acquiring 50.1 percent of Banc Investment Group, LLC, Walnut Creek, California pursuant to section 225.28(b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, June 19, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–15931 Filed 6–24–02; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0250]

Submission for OMB Review and Public Comments; Comment Request Entitled Zero Burden Information Collection Reports

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for an extension to an existing OMB clearance (3090–0250).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Zero Burden Information Collection Reports. A request for public comments was published at 67 FR 13634, March 25, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: *Comment Due Date:* July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Acquisition Policy Division, GSA (202) 501–1900.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Ms. Stephanie Morris, General Services Administration (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control Number 3090–0250.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting that the Office of Management and Budget (OMB) renew information collection, 3090–0250, Zero Burden Information Collection Reports.

This information requirement consists of reports that do not impose collection burdens upon the public. These collections require information which is already available to the public at large or that is routinely exchanged by firms during the normal course of business. A general control number for these collections decreases the amount of paperwork generated by the approval process. Since May 10, 1992, GSA has published two rules that fall under Information Collection 3090–0250: ''Implementation of Public Law 99–506'' published at 56 FR 29442, June 27, 1991, and ''Industrial Funding Fee'' published at 62 FR 38475, July 18, 1997.

B. Annual Reporting Burden

None.

Obtaining copies of proposal: Requester may obtain a copy of the proposal from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0250, Zero Burden Information Collection Reports.

Dated: June 19, 2002.

Michael W. Carleton,

Chief Information Officer (I).

[FR Doc. 02–15945 Filed 6–24–02; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Availability of Funds for Grants for the Health Disparities In Minority Health Program

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Minority Health (OMH).

ACTION: Notice.

SUMMARY: The purpose of the Fiscal Year (FY) 2002 Health Disparities In Minority Health Grant Program is to support the elimination of health disparities among racial and ethnic populations (see definition of Minority Populations) through local small-scale projects which address a demonstrated health problem or health issue. This program is intended to demonstrate the merit of using local organizations to develop, implement, and conduct small-scale community-based projects which address health problems and issues related to health disparities in local minority communities.

Authority: This program is authorized under Section 1701 (e)(1) of the Public Health Service (PHS) Act, as amended.

Outcomes for projects addressing HIV/AIDS must include any or all of the following:

- Reduction in high-risk behaviors (e.g., injection drug use, multiple partners, unprotected sex).
- Increased counseling and testing services (e.g., hardly reached minority populations—youth, women at risk, men having sex with men, homeless persons, injection drug users, mentally ill persons, incarcerated persons).
- Improved access to health care (e.g., hardly reached minority populations—youth, women at risk, men having sex with men, homeless persons, injection drug users, mentally ill persons, incarcerated persons).

The outcome for all other projects must be a decrease in the targeted health disparity(ies) as demonstrated through:

- Reduction in high-risk behaviors (e.g., tobacco use, physical inactivity, poor eating habits); or
- Improved access to health care.

ADDRESSES: For this grant, applicants must use Form PHS 5161–1 (Revised July 2000 and approved by OMB under Control Number 0348–0043). Applicants are advised to pay close attention to the specific program guidelines and general instructions provided in the application kit. To get an application kit, write to: Ms. Chanee Jackson, OMH Grants Management Center, c/o Health Management Resources, Inc., 8401 Corporate Drive, Suite 400, Landover, MD 20785, e-mail *grantrequests@healthman.com,* fax (301) 429–2315; or call Chanee Jackson at (301) 429–2300. Send the original and 2 copies of the complete grant application to Ms. Chanee Jackson at the same address.

DATES: To receive consideration, grant applications must be postmarked by the OMH Grants Management Center by 5 p.m. EDT on July 25, 2002. Applications postmarked after the exact date and time

specified for receipt will not be accepted. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be returned to the applicant unread.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Campbell, Grants Management Officer, for technical assistance on budget and business aspects of the application. She may be contacted at the Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852; or by calling (301) 594–0758. For questions on the program and assistance in preparing the grant proposal, contact: Ms. Cynthia H. Amis, Director, Division of Program Operations, at the same address; or by calling (301) 594–0769.

For additional assistance contact the OMH Regional Minority Health Consultants listed in the grant application kit. For health information, call the OMH Resource Center at 1–800–444–6472.

SUPPLEMENTARY INFORMATION: OMB Catalog of Federal Domestic Assistance: The Catalog of Federal Domestic Assistance Number for this program is 93.100.

Availability of Funds: About $1 million is expected to be available for award in FY 2002. It is expected that 20 to 30 awards will be made. Support may be requested for a total project period not to exceed 2 years.

Those applicants funded through the competitive process:

1. Are to begin their projects on September 30, 2002.

2. Will receive an award up to $50,000 total costs (direct and indirect) for a 12 month period.

3. Will be able to apply for a noncompeting continuation award of up to $50,000 (direct and indirect) for an additional 1 year. After year 1, funding will be based on:

—The amount of money available;
—Success or progress in meeting project objectives.

Note: For noncompeting continuation awards, grantees must submit a continuation application, written reports, and continue to meet the established program guidelines.

Eligible Applicants: To qualify for funding, an applicant must be a private non-profit community-based, minority-serving organization which addresses health and human services.

Note: Faith-based organizations that meet the definition of a private nonprofit community-based, minority-serving organization are eligible to apply for these Health Disparities In Minority Health Grants. Tribal organizations and local affiliates of national, state-wide, or regional organizations that meet the definition of a private non-profit community-based, minority-serving organization are also eligible to apply.

The organization submitting the application will:

- Serve as the lead agency for the project, responsible for its implementation and management.
- Serve as the fiscal agent for the federal grant awarded.

Organizations may not receive a grant from more than one OMH program at the same time. However, an organization with an OMH grant that ends by 9/29/02 can submit an application under this announcement.

Background

The Department of Health and Human Services (HHS), OMH is committed to working with community-based organizations and minority institutions of higher education to improve the health of racial and ethnic minority populations (see definition of Minority Populations), through the development of health policies and programs that help to eliminate health disparities and gaps. OMH serves as the focal point in the HHS for service demonstrations, coalition, and partnership building, and related efforts to address the health needs of racial and ethnic minorities.

To that end, OMH implemented the Health Disparities In Minority Health Grant Program in FY 2001 to address a wide range of health problems, gaps in service, and issues that affect the health and well-being of local minority communities. It is anticipated that this program will strengthen local efforts which have been using innovative approaches to address a wide range of health issues affecting local minority communities.

Annual issues of *Health, United States* [1] and *Healthy People 2010* [2], report that the overall health of the Nation continues to steadily and significantly improve. Yet, these reports also indicate that racial and ethnic minorities have not benefitted equally in this progress over time. The fact remains that disparities in the burden of death and illness experienced by American Indians or Alaska Natives, Asians, Blacks or African Americans, Native Hawaiians or Other Pacific Islanders, and Hispanics or Latinos, as compared with the United States population as a whole, have persisted, and, in many areas, are growing.

Among the many disparities noted, the *Healthy People 2010* reports:

- Although the proportion of the adult population having a specific source of primary care has increased, Hispanic and African American adults and other subgroups continue to be less likely to have a specific source of primary care.
- Despite lower overall rates in the United States, infant mortality rates for American Indians or Alaska Natives, African Americans, Native Hawaiians, and Puerto Ricans are persistently higher than for whites. The infant mortality rate for African Americans remains twice that of whites.
- Deaths due to breast cancer in African American females continues to increase, in part because the breast cancer is diagnosed at later stages.
- Hispanics have higher rates of cervical, esophageal, gallbladder, and stomach cancers than the white population. New cases of female breast and lung cancers are increasing among Hispanics, who are diagnosed at later stages and have lower survival rates than whites. Some specific forms of cancer affect other ethnic groups at rates higher than the national average (for example, stomach and liver cancers among Asian American populations and colorectal cancer among Alaska Natives).
- The relative number of persons diagnosed with diabetes in American Indian, African American, and Hispanic communities is one to five time greater than in white communities.
- The number of existing cases of high blood pressure is nearly 40 percent higher in African Americans than in whites (an estimated 6.4 million African Americans), and the effects are more frequent and severe in the African American population.
- African Americans and Hispanics comprised 55 percent (251,408 and 124,841, respectively) of the 688,200 cases of AIDS reported among persons of all ages and racial and ethnic groups through December 1998.

The HHS supports the effort to eliminate disparities in health status experienced by racial and ethnic minority populations by year 2010. The 28 focus areas embodied in *Healthy People 2010* are targeted for specific improvements. To learn more information about the health disparities that exist among racial and ethnic minorities in the United States today, read applicable sections of *Healthy People 2010.* (See the section on Healthy People 2010 in this announcement for information on how to obtain a copy.)

[1] Health, United States, 2001, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, HHS Publication Number (PHS) 01–1232.

[2] Healthy People 2010, U.S. Department of Health and Human Services, 2nd ed., volumes I and II, November 2000.

Applicants may elect to address *any of the 28 focus areas contained in Healthy People 2010 or other health problems* where there is a health disparity in a local minority community.

Note: The Healthy People 2010 focus areas will also be listed in the grant application kit.

Project Requirements

Each project funded under this demonstration program must:

1. Address at least 1, but no more than 3, of the health focus areas addressed in *Healthy People 2010* or other documented health problems or issues that affect the targeted local minority group(s);
2. Identify problems, such as gaps in services, or issues affecting the targeted area which will be addressed by the proposed project;
3. Identify existing resources in the targeted area which will be linked to the proposed project; and
4. Implement an innovative approach to address the problem(s).

Use of Grant Funds: Budgets up to $50,000 total costs (direct and indirect) may be requested per year to cover costs of:

- Personnel;
- Consultants;
- Equipment;
- Supplies;
- Grant related travel;
- Other grant related costs.

Note: All budget requests must be fully justified in terms of the proposed purpose, objectives, and activities.

Funds *may not* be used for:

- Activities that may compromise privacy and confidentiality of the target population;
- Building alterations or renovations;
- Conferences;
- Construction;
- Fund raising activities;
- Job training;
- Medical treatment;
- Political education and lobbying;
- Research studies involving human subjects;
- Vocational rehabilitation.

Review of Applications

- Applications will be screened upon receipt. Those that are judged to be incomplete, non-responsive or non-conforming to the announcement, will not be accepted for review and will be returned.
- Each organization may submit no more than one proposal under this announcement.
- Accepted applications will be reviewed for technical merit in accordance with PHS policies.
- Accepted applications will be evaluated by an Objective Review Committee. Committee members will be chosen for their expertise in minority health and their understanding of the unique health problems and related issues confronted by racial and ethnic minority populations in the United States.

Application Review Criteria: The technical review of applications will consider the following 5 generic factors.

Factor 1: Program Plan (35%)

- Appropriateness of the overall approach, and likelihood of successful implementation of the project.
- Logic and sequencing of the planned approach, and appropriateness of specific activities for each objective.
- Adequacy of time allowed to accomplish the proposed activities.

Factor 2: Evaluation (20%)

- Thoroughness, feasibility, and appropriateness of the evaluation design, data collection, and analysis procedures for each objective.
- Clarity of the intent and plans to document the activities and their outcomes.
- Potential for replication of the project for similar target populations and communities.
- Potential for proposed project to impact the targeted health disparity(ies).

Factor 3: Background (15%)

- Significance and prevalence of the identified health issue(s) in the target population.
- Need for the intervention within the proposed minority community and target population.
- Approach for bringing together community-based resources to address the problem(s).
- Extent to which the applicant demonstrates access to the target minority community(ies), and whether it is well positioned and accepted within the community(ies) to be served.
- A track record that describes the extent and documented outcomes of past efforts and activities with the target population. (Currently funded Health Disparities In Minority Health Grantees [competing continuation applicants] must attach a progress report describing project accomplishments and outcomes.)

Factor 4: Objectives (15%)

- Merit of the objectives.
- Relevance to the program purpose and stated problems.
- Attainability in the stated time frames.

Factor 5: Management Plan (15%)

- Applicant organization's capability to manage and evaluate the project as determined by:

—Qualifications and appropriateness of proposed staff or requirements for ''to be hired'' staff
—Proposed staff level of effort
—Management experience of the applicant
—The applicant's organizational structure
—Appropriateness of defined roles including staff reporting channels and that of any proposed contractors

Award Criteria

Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health of the OMH and will take under consideration:

- The recommendations and ratings of the review panel.
- Geographic and racial/ethnic distribution.
- Health disparity(ies) addressed.

Reporting and Other Requirements

General Reporting Requirements: A successful applicant under this notice will submit: (1) Progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the OMH, in accordance with provisions of the general regulations which apply under 45 CFR 74.51–74.52, with the exception of State and local governments to which 45 CFR part 92, subpart C reporting requirements apply.

Public Health System Reporting Requirements: This program is subject to Public Health Systems Reporting Requirements. Under these requirements, a 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 organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424); and (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;

and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of Minority Health.

State Reviews: This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit available under this notice will contain a list of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the OMH Grants Management Officer.

The OMH does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs'' Executive Order 12372 and 45 CFR Part 100 for a description of the review process and requirements).

Healthy People 2010

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS-led national activity announced in January 2000 to eliminate health disparities and improve the years and quality of life. More information on the Healthy People 2010 objectives may be found on the Healthy People 2010 Web site: *http://www.health.gov/healthypeople.* Copies of the *Healthy People 2010 Volumes I and II* can be purchased by calling (202) 512–1800 (cost $70.00 for the printed version or $19.00 for the CDROM). Another reference is the *Healthy People 2000 Review 1998–99.*

For 1 free copy of the *Healthy People 2010,* contact: The National Center for Health Statistics (NCHS), Division of Data Services, 6525 Belcrest Road, Hyattsville, MD 20782–2003, or telephone (301) 458–4636; ask for HHS Publication No. (PHS) 99–1256.

This document may also be downloaded from the NCHS Web site: *http://www.cdc.gov/nchs.*

Definitions

For purposes of this grant announcement, the following definitions are provided:

Community-Based Organization: A private non-profit organization that is representative of communities or significant segments of communities, and where the control and decision-making powers are located at the community level.

Community-Based Minority-Serving Organization: A community-based organization that has a history of service to the racial/ethnic minority populations. (See definition of Minority Populations below.)

Minority Populations: American Indian or Alaska Native; Asian; Black or African American; Hispanic or Latino and Native Hawaiian or Other Pacific Islander. (Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, **Federal Register**, Vol. 62, No. 210, pg. 58782, October 30, 1997).

Dated: June 20, 2002.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 02–15986 Filed 6–24–02; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Availability of Funds for Grants for the Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Minority Communities

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Notice.

SUMMARY: The purpose of this Fiscal Year (FY) 2002 Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Minority Communities is to stimulate, foster, and support the development of effective and durable service delivery capacity for HIV prevention and treatment among organizations closely interfaced with minority populations impacted by HIV/AIDS. The grantee will identify community-based minority-serving organizations that are well linked with minority populations affected by HIV/AIDS, and which have recognized needs and/or gaps in their capacity to provide HIV/AIDS-related prevention and care services. The goals are to:

- Provide administrative and programmatic technical assistance to enable those organizations to enhance their delivery of necessary services; and
- Assist those community-based minority-serving organizations, through an ongoing mentoring relationship, in the development of their capacity as fiscally viable and programmatically effective organizations thereby allowing them to successfully compete for federal funds and other resources.

Authority: This program is authorized under section 1707(e)(1) of the Public Health Service Act (PHS), as amended.

This program is intended to demonstrate the impact of technical assistance and capacity development on improving HIV prevention and care among organizations within a circumscribed area in which many minority individuals (*see* definition of Minority Populations) are in need of HIV/AIDS prevention and/or treatment services. To the extent that selected services such as substance abuse and mental health treatment, in relation to HIV/AIDS, are available within the circumscribed area, linkages with these services will be fostered as part of the technical assistance. The program is intended to address HIV/AIDS issues within the context of related socioeconomic factors and contribute to overall community empowerment by strengthening indigenous leadership and organizations.

Project outcomes must include any or all of the following:

- Reduction in high-risk behaviors by increasing the capacity of community-based minority-serving organizations to work directly with hardly reached minority populations (*e.g.,* youth, women at risk, men having sex with men, homeless persons, injection drug users, mentally ill persons, incarcerated persons).
- Improved access to health care through increasing the capacity of community-based minority-serving organizations to work directly with hardly reached minority populations (*e.g.,* youth, women at risk, men having sex with men, homeless persons, injection drug users, mentally ill persons, incarcerated persons).
- Increased counseling and testing services by increasing the capacity of community-based minority-serving organizations to work directly with hardly reached minority populations (*e.g.,* youth, women at risk, men having sex with men, homeless persons, injection drug users, mentally ill persons, incarcerated persons).

• Increased number of community-based minority-serving organizations directly involved in addressing the HIV/AIDS epidemic.

• Increased number of community-based minority-serving organizations with the programmatic and fiscal capacity to identify, apply for, and receive funding to address the HIV/AIDS epidemic.

ADDRESSES: For this grant, applicants must use Form PHS 5161–1 (Revised July 2000 and approved by OMB under Control Number 0348–0043). Applicants are advised to pay close attention to the specific program guidelines and general instructions provided in the application kit. To get an application kit, write to: Ms. Chanee Jackson, OMH Grants Management Center, c/o Health Management Resources, Inc., 8401 Corporate Drive, Suite 400, Landover, MD 20785, e-mail *grantrequests@healthman.com,* fax (301) 429–2315; or call Chanee Jackson at (301) 429–2300. Send the original and 2 copies of the complete grant application to Ms. Chanee Jackson at the same address.

DATES: To receive consideration, grant applications must be postmarked by the OMH Grants Management Center by 5 p.m. EDT on July 25, 2002. Applications postmarked after the exact date and time specified for receipt will not be accepted. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be returned to the applicant unread.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Campbell, Grants Management Officer, for technical assistance on budget and business aspects of the application. She may be contacted at the Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852; or by calling (301) 594–0758. For questions on the program and assistance in preparing the grant proposal, contact: Ms. Cynthia H. Amis, Director, Division of Program Operations, at the same address; or by calling (301) 594–0769.

For additional assistance, contact OMH Regional Minority Health Consultants listed in the grant application kit. For health information, call the OMH Resource Center at 1–800–444–6472.

SUPPLEMENTARY INFORMATION: OMB Catalog of Federal Domestic Assistance: The OMB Catalog of Federal Domestic Assistance Number for this program is 93.006.

Availability of Funds

About $4.8 million is expected to be available for award in FY 2002. It is expected that 10 to 12 awards will be made. Support may be requested for a total project period not to exceed 3 years.

Those applicants funded through the competitive process:

• Are to begin their service demonstration programs on September 30, 2002.

• Will receive an award up to $400,000 total costs (direct and indirect) for a 12-month period.

• Will be able to apply for a noncompeting continuation award up to $400,000 (direct and indirect) for each of two additional years. After year 1, funding will be based on:

—The amount of money available; and

—Success or progress in meeting project objectives.

Note: For the noncompeting continuation awards, grantees must submit continuation applications, written reports, and continue to meet the established program guidelines.

Eligible Applicants

To qualify for funding, an applicant must:

1. Be a private nonprofit community-based minority-serving organization (*see* definition) which addresses health and human services; or

2. Be a public (state or local government) or tribal governmental entity which addresses health and human services.

Applicants must have a minimum of five years experience providing HIV/AIDS-related services. The applicant must have the necessary administrative infrastructure to receive and appropriately manage federal funds.

Note: Faith-based organizations that meet the above criteria are eligible to apply for these Technical Assistance and Capacity Development Demonstration grants. Tribal organizations and local affiliates of national, state-wide, or regional organizations that meet the definition of a private non-profit community-based, minority-serving organization are also eligible to apply.

Organizations may not receive a grant from more than one OMH program at the same time. However, an organization with an OMH grant that ends by 9/29/02 can submit an application under this announcement.

The applicant submitting the application will:

1. Serve as the lead agency for the grant;

2. Be responsible for the implementation and management of the project; and

3. Serve as the fiscal agent for the federal grant awarded.

Background

The Office of Minority Health's (OMH) mission is to improve the health of racial and ethnic minority populations (see definition of Minority Populations) through the development of health policies and programs that help to eliminate health disparities and gaps. OMH serves as the focal point in the Department of Health and Human Services for service demonstrations, coalition and partnership building, and related efforts to address the health needs of racial and ethnic minorities. In keeping with its mission, OMH is continuing the Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Minority Communities to assist in addressing the HIV/AIDS issues facing minority communities. This program is based on the premise that providing technical assistance and capacity development to organizations closely linked with the minority populations impacted by the disease, will improve their capacity to better provide minority populations with HIV/AIDS prevention and treatment services. It is anticipated that this approach will strengthen existing community-based minority-serving organizations' ability to address this health issue by developing and expanding their technical skills and infrastructure capacity. Applicants are encouraged to establish linkages with other federally funded programs supporting HIV/AIDS prevention and care to maximize these efforts.

Effect of HIV/AIDS on Minorities

The Census 2000 Brief [1] reports the U.S. population as 281.4 million, with 36.4 million [2] Blacks or African Americans, or 12.9 percent; 35.3 million Hispanics, or 12.5 percent; approximately 12.8 million Asians/Native Hawaiians and Other Pacific Islanders, or 4.5 percent; and approximately 4 million American Indians/Alaska Natives or 1.5 percent of the total population. HIV/AIDS remains a disproportionate threat to minorities. As of December 31, 2000, the Centers for Disease Control and Prevention (CDC) received reports of 774,467 (cumulative) cases of persons with AIDS in the U.S.[3], of whom 38 percent were Black or

[1] U.S. Census Bureau, The Black Population: 2000—Census 2000 Brief, August 2001.

[2] This number includes individuals who self-reported as Black, or as Black and one or more other race on the Census 2000 questionnaire.

[3] HIV/AIDS Surveillance Report-U.S. HIV and AIDS cases reported through December 2000, Year-End Edition, Vol. 12, No. 2.

African American, and 18 percent were Hispanic.

Of the 42,156 AIDS cases reported to CDC during 2000, 41,960 were adult/adolescent and 196 were children (<13 years of age). For the adult/adolescent population, 47 percent were Black or African American, and 19 percent were Hispanic. Of the 196 children reported with AIDS, 65 percent were Black non-Hispanic, and 17 percent were Hispanic.

Through December 2000, the most common exposure category reported for AIDS cases among African American and Hispanic males was men who have sex with men (37% and 42%, respectively), with the second most common exposure being injection drug use (34% and 35%, respectively).

HIV infection among U.S. women has increased significantly over the last decade, especially in communities of color. Between 1985 and 1999, the proportion of all AIDS cases reported among adult and adolescent women more than tripled, from 7 to 23 percent. African American and Hispanic women account for more than three-fourths, or 77 percent, of the AIDS cases reported among women in the U.S. Through December 2000, the most common exposure categories for AIDS cases among African American and Hispanic females were heterosexual contact (47%, Hispanic; 38%, African American) and injection drug use (41%, African American; 40%, Hispanic). Young African American and Hispanic women accounted for more than three-fourths of the HIV infections reported among females between the ages of 13 to 24, according to reports to the CDC from the 32 areas with confidential HIV reporting for adults and adolescents for all years combined through 1999.

Project Requirements

Each project funded under this demonstration program is to conduct a model program which is designed to carry out the following functions:

1. Identify the existing capacity for delivering HIV-related services (both HIV prevention and treatment) to minority populations and compare this with available HIV/AIDS surveillance data.

2. Identify high risk minority communities where there are recognized gaps in services for minority populations with HIV/AIDS.

3. Increase the capacity of existing community-based minority-serving organizations which are well interfaced with the minority populations to be served to deliver HIV/AIDS prevention and care by:

• Providing administrative technical assistance to improve the fiscal and organizational capacity appropriate to their programmatic responsibilities; and

• Identifying programmatic technical assistance from the Department of Health and Human Services' Operating Divisions and linking appropriate community-based minority-serving organizations with these resources.

4. Working with newly identified community-based minority-serving organizations to develop strong linkages with other providers of services to complete a continuum of prevention and treatment services, including substance abuse treatment and mental health services for minority HIV/AIDS populations.

Use of Grant Funds

Budgets up to $400,000 total costs (direct and indirect) may be requested per year to cover costs of:

- Personnel;
- Consultants;
- Supplies;
- Equipment;
- Grant-related travel;
- Other grant related costs.

Note: All budget requests must be fully justified in terms of the proposed purpose, objectives, and activities. Funds to attend an annual OMH grantee meeting must be included in the budget.

Funds may not be used for:

- Medical treatment;
- Medical supplies;
- Direct services;
- Fund raising activities;
- Building alterations or renovations;
- Construction.

Review of Applications

• Applications will be screened upon receipt. Those that are judged to be incomplete, non-responsive, or non-conforming to the announcement will not be accepted for review and will be returned.

• Each organization may submit no more than one proposal under this announcement.

• Accepted applications will be reviewed for technical merit in accordance with PHS policies.

• Accepted applications will be evaluated by an Objective Review Committee. Committee members will be chosen for their expertise in minority health and their understanding of the health problems and related issues confronted by racial and ethnic minority populations in the United States.

Application Review Criteria

The technical review of applications will consider the following 5 generic factors.

Factor 1: Program Plan (35%)

• Appropriateness of proposed approach and specific activities for each objective.

• Soundness of any established organizational linkage(s) for providing administrative and programmatic technical assistance related to HIV/AIDS and assisting with the capacity development of identified community-based minority-serving organizations.

• Logic and sequencing of the planned approaches in relation to the objectives and program evaluation.

Factor 2: Evaluation (20%)

• Thoroughness, feasibility, and appropriateness of the evaluation design, data collection, and analysis procedures.

• Clarity of the intent and plans to document activities and their outcomes to establish a model.

• Potential for replication of the project for similar target populations and communities including the assessment of the utility of the different tools used to implement the program.

• Potential for proposed project to impact the HIV/AIDS health disparities experienced by minority populations.

Factor 3: Background (15%)

• Demonstrated knowledge of the HIV/AIDS epidemic at the local level.

• Established level of cultural competence and sensitivity to the issues of minority populations impacted by HIV/AIDS in the service area.

• Expertise and understanding of HIV/AIDS prevention and treatment service delivery systems especially as related to HIV/AIDS care among minority populations.

• Demonstrated need for technical assistance and capacity development among the proposed target service organizations.

• History of long-term relationship with the targeted minority community and evidence of support of local agencies and/or organizations.

• Extent to which the applicant demonstrates access to targeted organizations, is well-positioned and accepted within the communities to be served, and able to interface with community leadership and existing provider systems in the area.

• Demonstration of objective outcomes of past efforts/activities with the target population. (Currently funded Technical Assistance and Capacity Development Demonstration grantees [competing continuation applicants] must attach a progress report describing project accomplishments and outcomes.)

Factor 4: Objectives (15%)

- Merit of the objectives.
- Relevance to the program purpose and stated problem.
- Attainability in the stated time frames.

Factor 5: Management Plan (15%)

- Applicant organization's capability to manage and evaluate the project as determined by:

—Qualifications and appropriateness of proposed staff or requirements for ''to be hired'' staff
—Proposed staff level of effort
—Management experience of the applicant

- Applicant organization's ability to mobilize a strong administrative technical assistance capacity with onsite knowledge of organizational management skills, diversification of fiscal base, and organizational development.
- Appropriateness of defined roles including staff reporting channels and that of any proposed contractors.

Award Criteria

Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health, OMH and will take under consideration:

- The recommendations and ratings of the review panel.
- Geographic and racial/ethnic distribution.

Reporting and Other Requirements

General Reporting Requirements

A successful applicant under this notice will submit: (1) Progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the OMH, in accordance with provisions of the general regulations which apply under 45 CFR 74.51–74.52, with the exception of State and local governments to which 45 CFR part 92, subpart C reporting requirements apply.

Public Health System Reporting Requirements

This program is subject to Public Health Systems Reporting Requirements. Under these requirements, a 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 organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate state and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), and (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, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of Minority Health.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit available under this notice will contain a listing of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the Office of Minority Health's Grants Management Officer.

The Office of Minority Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs'' Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

Healthy People 2010

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS-led national activity announced in January 2000 to eliminate health disparities and improve years and quality of life. More information on the *Healthy People 2010* objectives may be found on the Healthy People 2010 Web site: *http://www.health.gov/healthypeople.* Copies of the *Healthy People 2010: Volumes I and II* can be purchased by calling (202) 512–1800 (cost $70 for printed version or $19 for CDROM). Another reference is the *Healthy People 2000 Review-1998–99.*

For 1 free copy of *Healthy People 2010,* contact NCHS: The National Center for Health Statistics, Division of Data Services, 6525 Belcrest Road, Hyattsville, MD 20782–2003; or telephone (301) 458–4636, ask for HHS Publication No. (PHS) 99–1256.

This document may also be downloaded from the NCHS Web site: *http://www.cdc.gov/nchs.*

Definitions

For purposes of this grant announcement, the following definitions are provided:

Community-Based Organization

A private nonprofit organization that is representative of communities or significant segments of communities, and where the control and decision-making powers are located at the community level.

Community-Based Minority-Serving Organization

A community-based organization that has a history of service to racial/ethnic minority populations. (*See* definition of Minority Populations below.)

Minority Populations

American Indian or Alaska Native; Asian; Black or African American; Hispanic or Latino; and Native Hawaiian or Other Pacific Islander. (Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, **Federal Register**, Vol. 62, No. 210, pg. 58782, October 30, 1997.)

Dated: June 20, 2002.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 02–15981 Filed 6–24–02; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Availability of Funds for Grants for the Minority Community Health Coalition Demonstration Grant Program, HIV/AIDS

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Notice.

SUMMARY: The purpose of this Fiscal Year 2002 Minority Community Health Coalition Demonstration Grant Program, HIV/AIDS is to improve health status relative to HIV/AIDS, of targeted minority populations (see definition of Minority Populations) through health promotion and education activities. This program is intended to demonstrate the effectiveness of community-based coalitions involving non-traditional partners in:

1. Developing an integrated community-based response to the HIV/AIDS crisis through community dialogue and interaction;

2. Addressing sociocultural, linguistic and other barriers to HIV/AIDS treatment to increase the number of individuals seeking and accepting services; and

3. Developing and conducting HIV/AIDS education and outreach efforts for hardly reached populations.

Authority: This program is authorized under section 1707(e)(1) of the Public Health Service Act (PHS), as amended.

The overall goal is to increase the health status of minority populations by increasing the educational understanding of HIV/AIDS, and improving access to HIV/AIDS prevention, testing, and treatment services.

Project outcomes must include any or all of the following:

- Reduction in high-risk behaviors (e.g., injection drug use, multiple partners, unprotected sex).
- Increased counseling and testing services for hardly reached minority populations (e.g., youth, women at risk, men having sex with men, homeless persons, injection drug users, mentally ill persons, incarcerated persons).
- Improved access to health care for hardly reached minority populations (e.g., youth, women at risk, men having sex with men, homeless persons, injection drug users, mentally ill persons, incarcerated persons).
- Increased number of community-based minority-serving organizations (e.g., faith based organizations, sororities, fraternities, rotary clubs) directly involved in addressing the HIV/AIDS epidemic.

ADDRESSES: For this grant, applicants must use Form 5161–1 (Revised July 2000 and approved by OMB under Control Number 0348–0043). Applicants are advised to pay close attention to the specific program guidelines and general instructions provided in the application kit. To get an application kit, write to: Ms. Chanee Jackson, OMH Grants Management Center, c/o Health Management Resources, Inc., 8401 Corporate Drive, Suite 400, Landover, MD 20785, e-mail *grantrequests@healthman.com,* fax (301) 429–2315; or call Chanee Jackson at (301) 429–2300. Send the original and 2 copies of the complete grant application to Ms. Chanee Jackson at the same address.

DATES: To receive consideration, grant applications must be postmarked by the OMH Grants Management Center by 5 p.m. EDT on July 25, 2002. Applications postmarked after the exact date and time specified for receipt will not be accepted. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be returned to the applicant unread.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Campbell, Grants Management Officer, for technical assistance on budget and business aspects of the application. She may be contacted at the Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852; or by calling (301) 594–0758. For questions on the program and assistance in preparing the grant proposal, contact: Ms. Cynthia H. Amis, Director, Division of Program Operations, at the same address; or by calling (301) 594–0769.

For additional assistance contact the OMH Regional Minority Health Consultants listed in the grant application kit. For health information call OMH Resource Center at 1–800–444–6472.

SUPPLEMENTARY INFORMATION: OMB Catalog of Federal Domestic Assistance: The Catalog of Federal Domestic Assistance Number for this program is 93.137.

Availability of Funds: About $2.5 million is expected to be available for award in FY 2002. It is expected that 17 to 25 awards will be made. Support may be requested for a total project period not to exceed 3 years.

Those applicants funded through the competitive process:

- Are to begin their projects on September 30, 2002.
- Will receive an award up to $150,000 total costs (direct and indirect) for a 12-month period.
- Will be able to apply for a noncompeting continuation award up to $150,000 (direct and indirect costs) for each of two additional years. After year 1, funding will be based on:

—The amount of money available; and

—Success or progress in meeting project objectives.

Note: For the noncompeting continuation awards, grantees must submit continuation applications, written reports, and continue to meet the established program guidelines.

Eligible Applicants: To qualify for funding, an applicant must:

1. Be a private non-profit community-based, minority-serving organization (see definition found in this announcement) which addresses health and human services;

2. Have an established community coalition of at least three discrete organizations. The applicant and at least one of the three organizations must have significant experience in conducting HIV/AIDS education, prevention and outreach activities; and

3. Be a community-based minority-serving organization and have at least five years or more experience in HIV/AIDS. One of the three organizations must be an AIDS Service Organization (ASO) with at least three years of experience. At least one of the coalition members must be an organization rooted in the community but with no experience conducting HIV/AIDS programs. The coalition must be documented in writing as specified under the project requirements described in this announcement.

Note: Faith-based organizations that meet the above criteria are eligible to apply for these Minority Community Health Coalition Demonstration Program, HIV/AIDS grants. Tribal organizations and local affiliates of national, state-wide, or regional organizations that meet the definition of a private non-profit community-based, minority-serving organization are also eligible to apply.

The organization submitting the application will:

- Serve as the lead agency for the project, responsible for its implementation and management.
- Serve as the fiscal agent for the federal grant awarded.

Organizations may not receive a grant from more than one OMH program at the same time. However, an organization with an OMH grant that ends by 9/29/02 can submit an application under this announcement.

Note: State, local, and tribal governments may not apply for this grant. For-profit hospitals and local school districts are also ineligible, although they all can be included in the project as a member of the community coalition.

Background

This program is based on the premise that a community coalition approach to health promotion and education activities can be effective in reaching minority target populations (see definition of Minority Populations)—especially those most at risk or hardly reached.

Among the merits of using coalitions is the higher likelihood that:

1. The intervention will be culturally and linguistically competent, credible, and more acceptable to the target population;

2. The project will address HIV/AIDS within the context of related socio-economic issues; and

3. The effort will contribute to overall community empowerment by strengthening indigenous leadership and organizations.

The OMH is continuing, through this announcement, to promote the utilization of community coalitions to develop and implement health promotion/education activities to specifically focus on HIV/AIDS. The OMH is also interested in involving those organizations in the coalition that have not traditionally been involved in HIV/AIDS prevention activities or services and outreach (*e.g.,* faith-based organizations, sororities, fraternities, rotary clubs) so that hardly reached populations (*e.g.,* inmates, homeless, women at risk, youth) are provided needed services. By including organizations that have not traditionally been involved in HIV/AIDS activities, the community coalition will expand its network and ability to access and serve these hardly reached populations. Applicants are also encouraged to establish linkages with other federally funded programs supporting HIV prevention and care to maximize these efforts.

The *Census 2000 Brief* [1] reports the U.S. population as 281.4 million, with 36.4 million [2] Blacks or African Americans, or 12.9 percent; 35.3 million Hispanics, or 12.5 percent; approximately 12.8 million Asians/Native Hawaiians and Other Pacific Islanders, or 4.5 percent; and approximately 4 million American Indians/Alaska Natives or 1.5 percent of the total population. HIV/AIDS remains a disproportionate threat to minorities. As of December 31, 2000, the Centers for Disease Control and Prevention (CDC) received reports of 774,467 (cumulative) cases of persons with AIDS in the U.S.[3], of whom 38 percent were Black or African American, and 18 percent were Hispanic.

Of the 42,156 AIDS cases reported to CDC during 2000, 41,960 were adult/adolescent and 196 were children (<13 years of age). For the adult/adolescent population, 47 percent were Black or African American, and 19 percent were Hispanic. Of the 196 children reported with AIDS, 65 percent were Black non-Hispanic, and 17 percent were Hispanic.

Through December 2000, the most common exposure category reported for AIDS cases among African American and Hispanic males was men who have sex with men (37% and 42%, respectively), with the second most common exposure being injection drug use (34% and 35%, respectively).

HIV infection among U.S. women has increased significantly over the last decade, especially in communities of color. Between 1985 and 1999, the proportion of all AIDS cases reported among adult and adolescent women more than tripled, from 7 to 23 percent. African American and Hispanic women account for more than three-fourths, or 77 percent, of the AIDS cases reported among women in the U.S. Through December 2000, the most common exposure categories for AIDS cases among African American and Hispanic females were heterosexual contact (47%, Hispanic; 38%, African American) and injection drug use (41%, African American; 40%, Hispanic). Young African American and Hispanic women accounted for more than three-fourths of the HIV infections reported among females between the ages of 13 to 24, according to reports to the CDC from the 32 areas with confidential HIV reporting for adults and adolescents for all years combined through 1999.

Project Requirements

Each project funded under this demonstration grant program must:

1. Propose to conduct a replicable, model program using an integrated community-based response to the HIV/AIDS crisis through community dialogue and interaction designed to improve the health status of targeted minority populations.

2. Have an established coalition prior to submission of an application that is capable of ensuring that the target population is provided with HIV/AIDS health promotion and education outreach activities that are linguistically, culturally, and age appropriate especially for hardly reached populations.

3. Engage minority communities in activities that will impact attitudes and perceptions in these communities to increase the number of individuals seeking and accepting services.

4. Have a minimum of three discrete organizations in the coalition which include:

- A community-based minority-serving organization;
- An AIDS Service Organization (ASO); and
- An organization rooted in the community with no experience in HIV/AIDS activities.

As the applicant, the community-based minority-serving organization must have at least five years of documented experience in conducting HIV/AIDS education and health promotion activities. The coalition must include an ASO with at least three years of documented experience to ensure that information dissemination on HIV/AIDS and related issues is current and accurate from a medical point of view. The coalition must also include at least one organization rooted in the community that has not traditionally been involved in HIV/AIDS activities.

5. A single (1) signed agreement between the community-based organization, the AIDS Service Organization and the inexperienced organization must be submitted with the application. The agreement must specify in detail the roles and resources that each entity will bring to the project, and the terms of the linkage. The linkage agreement must cover the entire project period. The document must be signed by individuals with the authority to represent the organization (e.g., president, chief executive officer, executive director).

Use of Grants Funds: Budgets up to $150,000 total costs (direct and indirect) may be requested per year to cover costs of:

- Personnel;
- Consultants;
- Supplies;
- Equipment;
- Grant related travel;
- Other grant related costs.

Note: All budget requests must be fully justified in terms of the proposed purpose, objectives and activities. Funds to attend an annual OMH grantee meeting must be included in the budget. Funds may not be used for:

- Medical treatment;
- Building alterations or renovations;
- Construction;
- Fund raising activities;
- Job training.

Review of Applications

- Applications will be screened upon receipt. Those that are judged to be incomplete, non-responsive, or non-conforming to the announcement will not be accepted for review and will be returned.
- Each organization may submit no more than one proposal under this announcement.
- Accepted applications will be reviewed for technical merit in accordance with PHS policies.

[1] U.S. Census Bureau, The Black Population: 2000—Census 2000 Brief, August 2001.

[2] This number includes individuals who self-reported as Black, or as Black and one or more other race on the Census 2000 questionnaire.

[3] HIV/AIDS Surveillance Report—U.S. HIV and AIDS cases reported through December 2000, Year-End Edition, Vol. 12, No. 2.

• Accepted applications will be evaluated by an Objective Review Committee. Committee members will be chosen for their understanding of the health problems and related issues confronted by racial and ethnic minority populations in the United States.

Application Review Criteria: The technical review of applications will consider the following 5 generic factors.

Factor 1: Program Plan (35%)

• Appropriateness of proposed approach and specific activities for each objective.
• Logic and sequencing of the planned approaches in relation to the objectives and program evaluation.
• Extent to which the applicant demonstrates access to the target population.
• Soundness of established linkages.

Factor 2: Evaluation (20%)

• Thoroughness, feasibility and appropriateness of the evaluation design, data collection and analysis procedures.
• Potential for proposed plan to impact the HIV/AIDS health disparities experienced by minority populations within the target communities.
• Clarity of the intent and plans to document the activities and their outcomes.
• Potential for replication of the project for similar target populations and communities.

Factor 3: Background (15%)

• Demonstrated knowledge of the problem at the local level.
• Demonstrated need within the proposed community and target population.
• Demonstrated support of local agencies and/or organizations, and established coalition in order to conduct proposed model.
• Extent and documented outcome of past efforts/activities with the target population. (Currently funded Minority Community Health Coalition Demonstration Grant Program, HIV/AIDS grantees [competing continuation applicants] must attach a progress report describing project accomplishments/outcomes.)

Factor 4: Objectives (15%)

• Merit of the objectives.
• Relevance to the program purpose and stated problems.
• Attainability in the stated time frames.

Factor 5: Management Plan (15%)

• Applicant organization's capability to manage and evaluate the project as determined by:
—Qualifications and appropriateness of proposed staff or requirements for ''to be hired'' staff
—Proposed staff level of effort
—Management experience of the applicant
• Appropriateness of defined roles including staff reporting channels and that of any proposed contractors.
• Experience of each coalition member as it relates to its defined roles in the project.
• Clear lines of authority and accountability among the proposed staff within and between participating organizations.

Award Criteria

Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health of the OMH and will take under consideration:

• The recommendations and ratings of the review panel.
• Geographic and racial/ethnic distribution.

Reporting and Other Requirements

General Reporting Requirements: A successful applicant under this notice will submit: (1) Progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the OMH, in accordance with provisions of the general regulations which apply under 45 CFR 74.51–74.52, with the exception of State and local governments to which 45 CFR part 92, subpart C reporting requirements apply.

Public Health System Reporting Requirements: This program is subject to Public Health Systems Reporting Requirements. Under these requirements, a community-based non-governmental 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 organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate Stated and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), 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; and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of Minority Health.

State Reviews: This program is subject to the requirements of Executive Order 12372 which allows State the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit available under this notice will contain a list of States which have chosen to setup a review system and will include a State Single Point of Contact (SPOC) in the State of review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the OMH Grants Management Officer.

The OMH does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs'' Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

Healthy People 2010

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS-led national activity announced in January 2000 to eliminate health disparities and improve years and quality of life. More information may be found on the Healthy People 2010 web site: *http//www.health.gov/healthypeople.* Copies of the *HealthyPeople2010: Volumes I and II* can be purchased by calling (202) 512–1800 (cost $70.00 for printed version; $19.00 for CD–ROM). Another reference is the *Healthy People 2000 Review 1998–99.*

For one free copy of *Healthy People 2010,* contact: The National Center for Health Statistics (NCHS), Division of Data Services, 6525 Belcrest Road, Hyattsville, MD 20782–2003, or telephone (301) 458–4636; ask for HHS Publication No. (PHS) 99–1256.

This document may also be downloaded from the NCHS web site *http://www.cdc.gov/nchs.*

Definitions

For purposes of this grant announcement, the following definitions are provided:

AIDS Service Organization (ASO): A health association, support agency, or other service activity involved in the prevention and treatment of AIDS. (HIV/AIDS Treatment Information Service's Glossary of HIV/AIDS-Related Terms, March 1997.)

Community-Based 0rganization: A private nonprofit organization that is representative of communities or significant segments of communities, and where the control and decision-making powers are located at the community level.

Community-Based Minority-Serving Organization: A community-based organization that has a history of service to racial/ethnic minority populations. (See definition of Minority Population below.)

Community Coalition: At least three (3) discrete organizations and institutions in a community which collaborate on specific community concerns, and seek resolution of those concerns through a formalized relationship documented by written memoranda of understanding/agreement signed by individuals with the authority to represent the organizations (e.g., president, chief executive officer, executive director).

Cultural Competency: A set of behaviors, attitudes, and policies that enable a system, agency, and /or individual to function effectively with culturally diverse clients and communities. (Randall-David, E., 1989)

Intervention: A combination of services designed to alter or modify a condition or outcome, or to change behavior to reduce the likelihood of a preventable health problem occurring or progressing further. Services include:

—Clinical preventive services (e.g., blood pressure screening)
—Environmental modifications
—Educational activities
—Coordinated networking activities among health and human service related programs

Minority Populations: American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, and Native Hawaiian or Other Pacific Islander. (Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, **Federal Register**, Vol. 62, No. 210, pg. 58782, October 30, 1997.)

Risk Factor: The environmental and behavioral influences capable of causing ill health with or without predisposition.

Sociocultural Barriers: Policies, practices, behaviors and beliefs that create obstacles to health care access and service delivery (e.g., cultural differences between individuals and institutions, cultural differences of beliefs about health and illness, customs and lifestyles, cultural differences in languages or nonverbal communication styles).

Dated: June 20, 2002.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 02–15984 Filed 6–24–02; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Availability of Funds for Grants for the State and Territorial Minority HIV/AIDS Demonstration Grant Program

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Notice.

SUMMARY: The purposes of this Fiscal Year (FY) 2002 State and Territorial Minority HIV/AIDS Demonstration Program are to:

1. Assist in the identification of needs within the state for HIV/AIDS prevention and services among minority populations (see definition of Minority Populations) by collection, analysis, and/or tracking of existing data on surveillance and existing providers of HIV services for minority communities;

2. Facilitate the linkage of community-based minority-serving organizations with other state and local recipients of federal funds for HIV/AIDS to develop greater resource capacity and interventions in the identified areas of need; and

3. Assist in coordinating Federal resources coming into high need, minority communities including identifying the different programs and facilitating access to federal technical assistance available to community-based minority-serving organizations.

Authority: This program is authorized under section 1707(e)(1) of the Public Health Service Act (PHS), as amended.

This program is intended to demonstrate that the involvement of state and territorial offices of minority health in coordinating a statewide response to the HIV/AIDS crisis in minority communities can have a greater impact on the communities' understanding of the disease, and the coordination of prevention and treatment services for minority populations, than agencies/organizations working independently.

Project outcomes must include any or all of the following:

- Reduction in high-risk behaviors by increasing the capacity of community-based minority-serving organizations to work directly with hardly reached minority populations (e.g., youth, women at risk, men having sex with men, homeless persons, injection drug users, mentally ill persons, incarcerated persons).
- Improved capacity of states to identify gaps in resources in areas of need to address the HIV/AIDS epidemic.
- Increased capacity of community-based minority-serving organizations to identify, apply for, and receive funding for support of activities to address identified gaps.
- Increased counseling and testing services by increasing the capacity of community-based minority-serving organizations to work directly with hardly reached minority populations (e.g., youth, women at risk, men having sex with men, homeless persons, injection drug users, mentally ill persons, incarcerated persons).

ADDRESSES: For this grant, applicants must use form PHS 5161–1 (Revised July 2000 and approved by OMB under Control Number 0348–0043). Applicants are advised to pay close attention to the specific program guidelines and general instructions provided in the application kit. To get an application kit, write to: Ms. Chanee Jackson, OMH Grants Management Center, c/o Health Management Resources, Inc., 8401 Corporate Drive, Suite 400, Landover, MD 20785, e-mail *grantrequests@healthman.com,* fax (301) 429–2315; or call Chanee Jackson at (301) 429–2300. Send the original and 2 copies of the complete grant application to Ms. Chanee Jackson at the same address.

DATES: To receive consideration, grant applications must be postmarked by the OMH Grants Management Center by 5 p.m. EDT on July 25, 2002. Applications postmarked after the exact date and time specified for receipt will not be accepted. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be returned to the applicant unread.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Campbell, Grants Management Officer, for technical assistance on budget and business aspects of the

application. She may be contacted at the Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852; or by calling (301) 594–0758. For questions on the program and assistance in preparing the grant proposal, contact: Ms. Cynthia H. Amis, Director, Division of Program Operations, at the same address; or by calling (301) 594–0769.

For additional assistance, contact OMH Regional Minority Health Consultants listed in the grant application kit. For health information, call the OMH Resource Center at 1–800–444–6472.

SUPPLEMENTARY INFORMATION: *OMB Catalog of Federal Domestic Assistance:* The OMB Catalog of Federal Domestic Assistance Number for this program is 93.006.

Availability of Funds: About $2.5 million is expected to be available for award in FY 2002. It is expected that 17 to 25 awards will be made. Support may be requested for a total project period not to exceed 3 years.

Those applicants funded through the competitive process:

- Are to begin their service demonstration programs on September 30, 2002.
- Will receive an award up to $150,000 total costs (direct and indirect) for a 12-month period.
- Will be able to apply for a noncompeting continuation award up to $150,000 (direct and indirect) for each of two additional years. After year 1, funding will be based on:

—The amount of money available; and
—Success or progress in meeting project objectives.

Note: For the noncompeting continuation awards, grantees must submit continuation applications, written reports, and continue to meet the established program guidelines.

Eligible Applicants: Eligibility is limited to state and territorial[1] offices of minority health or, for those states and/or territories that do not have an established office of minority health, a state or territorial minority health entity located within a state or territorial department of health which functions in the capacity of an office of minority health. (*See* definitions in this announcement.)

Documentation to verify official status as a state or territorial office of minority health or as a state or territorial minority health entity must be submitted.

A letter of support and commitment to the proposed demonstration project from an authorizing official such as the state or territorial Commissioner of Health is also required as part of the application. For the purposes of this announcement, both the established state and territorial offices of minority health and any recognized state and/or territorial minority health entity will be referred to as a state or territorial office of minority health. Each state and territory may submit only one proposal under this announcement.

Background

The Office of Minority Health's (OMH) mission is to improve the health of racial and ethnic minority populations (see definition of Minority Populations) through the development of health policies and programs that help to eliminate health disparities and gaps. OMH serves as the focal point within the Department of Health and Human Services for service demonstrations, coalition and partnership building, and related efforts to address the health needs of racial and ethnic minorities. In keeping with this mission, OMH established the State and Territorial Minority HIV/AIDS Demonstration Program in FY 1999 to assist in addressing HIV/AIDS issues facing minority communities across the United States. This program is based on the premise that a broad, state-level approach to HIV/AIDS health care promotion and prevention can be effective in reaching minority populations by both defining existing needs of prevention and treatment, and supporting strategies to address those needs. It is anticipated that this approach will strengthen existing state activities in addressing this health issue by facilitating infrastructure development or expansion of state or territorial offices of minority health to: (1) Take a lead role in identifying major areas of need in minority communities; (2) link community-based minority-serving organizations with other state and local partners in the identified areas of need; and (3) assist in coordinating federal resources coming into high need, minority communities including identifying the different programs and facilitating access to federal technical assistance available to community-based minority-serving organizations.

Effect of HIV/AIDS on Minorities

The *Census 2000 Brief*[2] reports the U.S. population as 281.4 million, with 36.4 million[3] Blacks or African Americans, or 12.9 percent; 35.3 million Hispanics, or 12.5 percent; approximately 12.8 million Asians/Native Hawaiians and Other Pacific Islanders, or 4.5 percent; and approximately 4 million American Indians/Alaska Natives or 1.5 percent of the total population.

HIV/AIDS remains a disproportionate threat to minorities. As of December 31, 2000, the Centers for Disease Control and Prevention (CDC) received reports of 774,467 (cumulative) cases of persons with AIDS in the U.S.[4], of whom 38 percent were Black or African American, and 18 percent were Hispanic.

Of the 42,156 AIDS cases reported to CDC during 2000, 41,960 were adult/adolescent and 196 were children (<13 years of age). For the adult/adolescent population, 47 percent were Black or African American, and 19 percent were Hispanic. Of the 196 children reported with AIDS, 65 percent were Black non-Hispanic, and 17 percent were Hispanic.

Through December 2000, the most common exposure category reported for AIDS cases among African American and Hispanic males was men who have sex with men (37% and 42%, respectively), with the second most common exposure being injection drug use (34% and 35%, respectively).

HIV infection among U.S. women has increased significantly over the last decade, especially in communities of color. Between 1985 and 1999, the proportion of all AIDS cases reported among adult and adolescent women more than tripled, from 7 to 23 percent. African American and Hispanic women account for more than three-fourths, or 77 percent, of the AIDS cases reported among women in the U.S. Through December 2000, the most common exposure categories for AIDS cases among African American and Hispanic females were heterosexual contact (47%, Hispanic; 38%, African American) and injection drug use (41%, African American; 40%, Hispanic). Young African American and Hispanic women accounted for more than three-fourths of the HIV infections reported among females between the ages of 13 to 24, according to reports to the CDC from the 32 areas with confidential HIV reporting for adults and adolescents for all years combined through 1999.

Project Requirements

Each applicant to this demonstration grant program must:

[1] Includes all 50 states, the District of Columbia, American Samoa, Federated States of Micronesia, Guam, Marshall Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, and the Virgin Islands.

[2] U.S. Census Bureau, The Black Population: 2000—Census 2000 Brief, August 2001.

[3] This number includes individuals who self-reported as Black, or as Black and one or more other race on the Census 2000 questionnaire.

[4] HIV/AIDS Surveillance Report-U.S. HIV and AIDS cases reported through December 2000, Year-End Edition, Vol. 12, No. 2.

1. Address the three purposes of the program announcement:

- Assist in the identification of needs within the state for HIV/AIDS prevention and services for minority populations by collection, analysis, and/or tracking of existing data on surveillance and existing providers of HIV services for minority communities;
- Facilitate the linkage of community-based minority-serving organizations with other state and local recipients of federal funds for HIV/AIDS to develop greater resource capacity and interventions in the identified areas of need; and
- Assist in coordinating federal resources coming into high need, minority communities including identifying the different programs and facilitating access to federal technical assistance available to community-based minority-serving organizations.

2. Describe plans to establish a project advisory committee to assist the applicant in carrying out the activities specified in the project. The membership is to be comprised of five to seven individuals with the applicant serving as an ex officio member. Committee membership must include: a representative from a state office on AIDS or state HIV/AIDS coordinator, an HIV/AIDS health care provider, and a representative from an AIDS service organization serving a substantial number of people of color. Other potential members may include: a minority person living with HIV/AIDS, a representative from an HIV/AIDS community planning committee or group, an outreach worker/social worker, or a consumer/patient advocate.

Use of Grant Funds: Budgets up to $150,000 total costs (direct and indirect) may be requested per year to cover costs of:

- Personnel
- Consultants
- Supplies
- Equipment
- Grant-related travel
- Other grant related costs

Note: All budget requests must be fully justified in terms of the proposed purpose, objectives, and activities. Funds to attend an annual OMH grantee meeting must be included in the budget.

Funds may not be used for:

- Medical treatment
- Medical supplies
- Direct services
- Fund raising activities
- Building alterations or renovations
- Construction

Review of Applications:

- Applications will be screened upon receipt. Those that are judged to be incomplete, non-responsive, or non-conforming to the announcement will not be accepted for review and will be returned.
- Each organization may submit no more than one proposal under this announcement.
- Accepted applications will be reviewed for technical merit in accordance with PHS policies.
- Accepted applications will be evaluated by an Objective Review Committee. Committee members will be chosen for their expertise in minority health and their understanding of the health problems and related issues confronted by racial and ethnic minority populations in the United States.

Application Review Criteria: The technical review of applications will consider the following 5 generic factors.

Factor 1: Program Plan (35%)

- Appropriateness of proposed plan and specific activities for each objective
- Logic and sequencing of the planned approaches in relation to the objectives and program evaluation
- Extent to which the applicant demonstrates access to community-based minority-serving organizations

Factor 2: Evaluation (20%)

- Thoroughness, feasibility and appropriateness of the evaluation design, and data collection and analysis procedures
- Clarity of the intent and plans to document activities and their outcomes
- Potential for proposed project to impact the HIV/AIDS health disparities experienced by minority populations within the state or territory

Factor 3: Background (15%)

- Demonstrated knowledge of the impact of HIV/AIDS on the state and within minority communities
- Appropriateness of the description of the HIV/AIDS problem confronting the state and minority communities and the needs to be addressed
- Extent and documented outcome of past efforts/activities in addressing HIV/AIDS in minority communities (Currently funded State and Territorial Minority HIV/AIDS grantees [competing continuation applicants] must attach a progress report describing project accomplishments and outcomes.)

Factor 4: Objectives (15%)

- Merit of the objectives
- Relevance to the program purpose and the stated problem
- Attainability in the stated time frames

Factor 5: Management Plan (15%)

- Applicant organization's capability to manage and evaluate the project as determined by:

—Qualifications and appropriateness of proposed staff or requirements for ''to be hired'' staff

—Proposed staff level of effort

—Composition of proposed advisory committee and defined role

- Appropriateness of defined roles including staff reporting channels and that of any proposed contractors

Award Criteria

Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health, OMH and will take under consideration:

- The recommendations and ratings of the review panel
- Geographic and racial/ethnic distribution

Reporting And Other Requirements

General Reporting Requirements: A successful applicant under this notice will submit: (1) Progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the OMH, in accordance with provisions of the general regulations which apply under 45 CFR part 74.51–74.52, with the exception of State and local governments to which 45 CFR part 92, subpart C reporting requirements apply.

State Reviews: This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit available under this notice will contain a listing of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the Office of Minority Health's Grants Management Officer. The Office of Minority Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (*See* ''Intergovernmental Review of

Federal Programs'' Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

Healthy People 2010

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS-led national activity announced in January 2000 to eliminate health disparities and improve years and quality of life. More information on the Healthy People 2010 objectives may be found on the Healthy People 2010 web site: *http://www.health.gov/healthypeople.* Copies of the *Healthy People 2010: Volumes I and II* can be purchased by calling (202) 512–1800 (cost $70 for printed version or $19 for CDROM). Another reference is the *Healthy People 2000 Review—1998–99.*

For 1 free copy of *Healthy People 2010,* contact NCHS: The National Center for Health Statistics, Division of Data Services, 6525 Belcrest Road, Hyattsville, MD 20782–2003, or telephone (301) 458–4636; ask for HHS Publication No. (PHS) 99–1256.

This document may also be downloaded from the NCHS web site: http://www.cdc.gov/nchs.

Definitions

For purposes of this grant announcement, the following definitions are provided:

AIDS Service Organization (ASO): A health association, support agency, or other service actively involved in the prevention and treatment of AIDS. (HIV/AIDS Treatment Information Service's *Glossary of HIV/AIDS-Related Terms,* March 1997.)

Community-Based Organization: A private nonprofit organization that is representative of communities or significant segments of communities, and where the control and decision-making powers are located at the community level.

Community-Based Minority-Serving Organization: A community-based organization that has a history of service to racial/ethnic minority populations. (See definition of Minority Populations below.)

Minority Populations: American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, and Native Hawaiian or Other Pacific Islander. (Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, **Federal Register**, Vol. 62, No. 210, pg. 58782, October 30, 1997.)

State or Territorial Offices of Minority Health: An entity established by an Executive Order, a statute or a state/territorial health officer to improve the health of racial and ethnic populations.

State or Territorial Minority Health Entity: A unit or contact located within a state or territorial department of health that addresses the health disparities experienced by minority populations.

Dated: June 20, 2002.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 02–15985 Filed 6–24–02; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket NO. 87F–0153]

Dow Chemical Co.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 7B3994), filed by Dow Chemical Co. proposing that the food additive regulations be amended to provide for the safe use of hydrogen peroxide solution to sterilize vinylidene chloride-vinyl chloride copolymers in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 4, 1987 (52 FR 21122), FDA announced that a food additive petition (FAP 7B3994) had been filed by Dow Chemical CO., Midland, MI 48674. The petition proposed to amend the food additive regulation § 178.1005 *Hydrogen peroxide* solution (21 CFR 178.1005) to provide for the safe use of hydrogen peroxide solution to sterilize vinylidene chloride-vinyl chloride copolymers in contact with food. Dow Chemical Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 12, 2002.

George H. Pauli,

Acting Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 02–15954 Filed 6–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs 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 July 10, 2002, from 8:30 a.m. to 5 p.m., and on July 11, 2002, from 8:30 a.m. to 4 p.m.

Location: Marriott Washingtonian Center, Grand Ballroom, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: *TurnerT@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 10, 2002, the committee will discuss the new drug application (NDA) 21–242, artesunate rectal capsules, World Health Organization, proposed for emergency treatment of acute malaria in patients who cannot take oral medication and for whom parenteral treatment is not available. On July 11, 2002, the committee will discuss clinical trial design for studies of otitis media. Since the publication of the 1998 ''Draft Guidance to Industry on Acute Otitis Media—Developing Antimicrobial Drugs for Treatment'' (see the FDA Internet Web site at *http://www.fda.gov/cder/guidance/*), the agency has received advice from the public and the Anti-Infective Drugs Advisory Committee on changes to clinical trial design (see transcripts from November 19, 1997; July 29 to 31, 1998; January 30, 2001; and November 7, 2001, for various antimicrobials at the FDA Internet Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*). The

agency has compiled these comments into a plan for further discussion by the committee.

Procedure: 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 July 2, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 1:30 p.m. on July 10, 2002, and between approximately 1 p.m. and 2 p.m. on July 11, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 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.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Tara Turner 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: June 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–15897 Filed 6–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees: Filing of Annual Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, as required by the Federal Advisory Committee Act, the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings.

ADDRESSES: Copies are available from the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, 301–827–6860.

FOR FURTHER INFORMATION CONTACT: Linda Ann Sherman, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR 14.60(c), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees that held closed meetings during the period October 1, 2000, through September 30, 2001:

Center for Biologics Evaluation and Research:

Biological Response Modifiers Advisory Committee;

Blood Products Advisory Committee; and

Vaccines and Related Biological Products Advisory Committee.

Center for Drug Evaluation and Research:

Anti-Infective Drugs Advisory Committee;

Arthritis Advisory Committee;

Cardiovascular and Renal Drugs Advisory Committee;

Dermatologic and Ophthalmic Drugs Advisory Committee; and

Oncologic Drugs Advisory Committee.

Center for Devices and Radiological Health:

Medical Devices Advisory Committee.

National Center for Toxicological Research:

Science Advisory Board to the National Center for Toxicological Research.

Annual reports are available for public inspection between 9 a.m. and 4 p.m., Monday through Friday at the following locations:

(1) The Library of Congress, Madison Bldg., Newspaper and Current Periodical Reading Room, 101 Independence Ave. SE., rm. 133, Washington, DC; and (2) The Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Dated: June 14, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–15899 Filed 6–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0266]

Draft ''Guidance for Industry: Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps);'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)'' dated June 2002. The draft guidance document provides information that would assist manufacturers of human cellular and tissue-based products in minimizing the possible risk of transmission of CJD/vCJD by HCT/Ps through deferral of donors with possible exposure to the agents of CJD and vCJD. Because there is no readily available demographic information about the HCT/P donor population, FDA encourages establishments to submit with their comments study data concerning the effect that implementation of these recommendations could have on the HCT/P supply.

DATES: Submit written or electronic comments on the draft guidance to ensure their adequate consideration in preparation of the final document by December 23, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the

SUPPLEMENTARY INFORMATION section for electronic access to the draft guidance.

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

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry: Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)'' dated June 2002. The draft guidance document provides information that would help human cellular and tissue-based product manufacturers minimize the possible risk of transmission of CJD/vCJD by HCT/Ps through deferral of donors with possible exposure to the agents causing CJD and vCJD.

The draft guidance document represents the agency's current thinking on this topic. 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 requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

This draft document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this draft guidance document. Submit written or electronic comments to ensure adequate consideration in preparation of the final document by December 23, 2002. Two copies of any written comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: June 13, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–15898 Filed 6–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0199]

Advertisements for High-Intensity Mercury Vapor Discharge Lamps; Revocation of Compliance Policy Guide 7133.13; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of May 21, 2002 (67 FR 35826). The document revokes the Compliance Policy Guide (CPG) entitled ''Sec. 391.100 Advertisement Literature for High-Intensity Mercury Vapor Discharge Lamps (CPG 7133.13).''

FOR FURTHER INFORMATION CONTACT: Doris B. Tucker, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–12623, appearing on page 35826 in the **Federal Register** of Tuesday, May 21, 2002, the following correction is made:

1. On page 35827, in the first column, the **DATES** section is corrected to read ''**DATES:** This revocation is effective June 20, 2002.''

Dated: June 18, 2002.

Deborah D. Ralston,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 02–15955 Filed 6–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1629]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Final Guidances for Industry on ''Effectiveness of Anthelmintics: Specific Recommendations for Feline'' (VICH GL20), and ''Effectiveness of Anthelmintics: Specific Recommendations for Poultry-Gallus gallus'' (VICH GL21); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two final guidances for industry (Nos. 113 and 114, respectively) entitled ''Effectiveness of Anthelmintics: Specific Recommendations for Feline'' (VICH GL20), and ''Effectiveness of Anthelmintics: Specific Recommendations for Poultry-*Gallus gallus*'' (VICH GL21). These related guidance documents have been developed by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). They are intended to standardize and simplify methods used in the evaluation of new anthelmintics submitted for approval to the European Union, Japan, and the United States.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the final guidances to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the final guidance documents 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 electronic access to the final guidance documents.

FOR FURTHER INFORMATION CONTACT: Thomas Letonja, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl.,

Rockville, MD 20855, 301–827–7576, e-mail: *tletonja@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce the differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use for several years to develop harmonized technical recommendations for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical recommendations for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission; European Medicines Evaluation Agency; European Federation of Animal Health, Committee on Veterinary Medicinal Products; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confederation Mondiale de L'Industrie de la Sante Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Final Guidance on Effectiveness of Anthelmintics

In the **Federal Register** of December 18, 2000 (65 FR 79113), FDA published the notice of availability of these VICH draft guidances, giving interested persons until January 17, 2001, to submit comments. FDA received no comments. The final guidance was submitted to the VICH Steering Committee. At a meeting held on June 28, 2001, the VICH Steering Committee endorsed the final guidances for industry, VICH GL20 and VICH GL21.

These final guidances, VICH GL20 and VICH GL21 should be read in conjunction with the ''Effectiveness of Anthelmintics: General Recommendations (EAGR)'' which was published in the **Federal Register** of April 6, 2001 (66 FR 18257). The guidances for feline and poultry are part of the EAGR, and the aim of these final guidances is to: (1) Be more specific for certain issues not discussed in the general guidance, (2) highlight differences with the EAGR on effectiveness data recommendations, and (3) give explanations for disparities with the EAGR.

The final level 1 guidance documents, developed under the VICH process, are consistent with FDA's good guidance practices regulation (21 CFR 10.115). These documents do not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternate method may be used as long as it satisfies the requirements of applicable statutes and regulations. Information collected is covered under OMB control number 0910–0032.

III. Comments

As with all of FDA's guidances, the public is encouraged to submit written or electronic comments with new data or other new information pertinent to these guidances. FDA will periodically review the comments in the docket and, where appropriate, will amend the guidances. The agency will notify the public of any such amendments through a notice in the **Federal Register**.

Interested persons may submit written or electronic comments to the Dockets Management Branch (see **ADDRESSES**) regarding these guidance documents at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. The guidances and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cvm*.

Dated: June 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–15896 Filed 6–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by July 25, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–057065

Applicant: Perlegen Sciences, Inc., Mountain View, California

The applicant request a permit to import cell lines from chimpanzees (Pan troglodytes) born both in the wild and captivity from Gabon and the Netherlands, respectively, for the purpose of scientific research.

PRT–698170

Applicant: Field Museum of Natural History, Chicago, IL

The applicant request a renewal of their permit to export and re-import endangered and threatened specimens already accessioned into the permittee's collection for scientific research. Permittee also request authorization to salvage dead endangered and threatened specimens found in the field. This notice covers activities by permittee for a period of five years.

PRT–055366

Applicant: Newton G. Beasley, Hampton, GA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–057588

Applicant: Fred C. Harteis, Harrisburg, PA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–055829

Applicant: Zoological Society of San Diego, San Diego, CA

The applicant requests a permit to import one captive-born male Cabot's tragopan (*Tragopan caboti*) from The Old House Bird Gardens Ltd., in Reading, United Kingdom, for the purpose of enhancement of the survival of the species through captive propagation.

PRT–054186 and 054188

Applicant: Philadelphia Zoological Garden, Philadelphia, PA

The applicant requests a permit to import (PRT–054186) three captive-born male cheetah (*Acinonyx jubatus*) from the Cango Wildlife Ranch, Oudtshoorn, South Africa for the purpose of enhancement of the species through captive propagation and conservation education. The second request is for a permit to import (PRT–054188) biological samples from these same three specimens for the purpose of veterinary screening prior to importation of the living specimens.

Marine Mammals and Endangered Species

The public is invited to comment on the following application for a permit to conduct certain activities with endangered marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), and the regulations governing marine mammals (50 CFR part 18) and endangered species (50 CFR Part 17). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–051399

Applicant: Diedrich Beusse, University of Florida, Gainesville, FL

Permit Type: Take for scientific research.

Name and Number of Animals: Florida manatee (*Trichechus manatus*), 50 per year.

Summary of Activity to be Authorized: The applicant requests a permit to conduct passive hydrophone listening to sounds made by manatees and playback vocalizations using a boat at idle speed in the Intracoastal Waterway waters of Florida.

Source of Marine Mammals: Wild animals in the waters of Florida.

Period of Activity: Up to 5 years, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–057467

Applicant: Robert E. Cogar, West Salem, OH

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Seapolar bear population in Canada for personal use.

PRT–057708

Applicant: Robert Talley, Norman, OK

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: May 31, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–15916 Filed 6–24–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for approval.

SUMMARY: The public is invited to comment on the following application for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

DATES: Written data, comments, or requests for a copy of this complete application must be received by July 25, 2002.

ADDRESSES: Written data, comments, or requests for a copy of this complete

application should be sent to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Andrea Gaski, Chief, Branch of CITES Operations, Division of Management Authority, at 703–358–2095.

SUPPLEMENTARY INFORMATION: *Applicant:* Ms. Marilena Salmones of Plano, Texas.

The applicant wishes to establish a cooperative breeding program for grey-headed lovebird (*Agapornis canus*), Fischer's lovebird (*Agapornis fischeri*), Lilian's lovebird (*Agapornis lilianae*), black-cheeked lovebird (*Agapornis nigrigenis*), red-headed lovebird (*Agapornis pullarious*), black-collared lovebird (*Agapornis swindernianus*), and black-winged lovebird (*Agapornis taranta*). The applicant wishes to be an active participant in this program along with five other individuals. The North American Parrot Society has agreed to assume oversight responsibility of this program if it is approved.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice.

Dated: May 28, 2002.

Andrea Gaski,

Chief Branch of CITES Operations, Division of Management Authority.

[FR Doc. 02–16025 Filed 6–24–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–02–1220–AA]

Call for Nominations for the Bureau of Land Management's California Desert District Advisory Council

SUMMARY: The Bureau of Land Management's California Desert District is soliciting nominations from the public for five members of its District Advisory Council to serve the 2003–2005 three-year term. Council members provide advice and recommendations to BLM on the management of public lands in southern California. Public notice begins with the publication date of this notice. Nominations will be accepted through August 31, 2002. The three-year term would begin January 1, 2003.

The five positions to be filled include one transportation/right-of-way representative, one renewable resources representative, and three public-at-large representatives, one of which will represent Native American interests. Council members serve three-year terms and may be nominated for reappointment to serve an additional three-year term.

Additional Information: The California Desert District Advisory Council is comprised of 15 private individuals who represent different interests and advise BLM officials on policies and programs concerning the management of 11 million acres of public land in southern California. The Council meets in formal session three to four times each year in various locations throughout the California Desert District. Council members serve without compensation except for reimbursement of travel expenditures incurred in the course of their duties.

Section 309 of the Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of BLM administered lands. The Secretary also selects council nominees consistent with the requirements of the Federal Advisory Committee Act (FACA), which requires nominees appointed to the council be balanced in terms of points of view and representative of the various interests concerned with the management of the public lands.

The Council also is balanced geographically, and BLM will try to find qualified representatives from areas throughout the California Desert District. The District covers portions of eight counties, and includes 11 million acres of public land in the California Desert Conservation Area and 300,000 acres of scattered parcels in San Diego, western Riverside, western San Bernardino, Orange, and Los Angeles Counties (known as the South Coast).

Any group or individual may nominate a qualified person, based upon their education, training, and knowledge of BLM, the California Desert, and the issues involving BLM-administered public lands throughout southern California. Qualified individuals also may nominate themselves.

Nominations must include the name of the nominee; work and home addresses and telephone numbers; a biographical sketch that includes the nominee's work and public service record; any applicable outside interests or other information that demonstrates the nominees qualifications for the position; and the specific category of interest in which the nominee is best qualified to offer advice and council. Nominees may contact the BLM California Desert District External Affairs staff at (909) 697–5217/5220 or write to the address below and request a copy of the nomination form.

All nominations must be accompanied by letters of reference from represented interests, organizations, or elected officials supporting the nomination. Individuals nominating themselves must provide at least one letter of recommendation. Advisory Council members are appointed by the Secretary of the Interior, generally in late January or early February.

Nominations should be sent to the District Manager, Bureau of Land Management, California Desert District, 6221 Box Springs Boulevard, Riverside, California 92507.

FOR MORE INFORMATION CONTACT: Doran Sanchez, BLM California Desert District External Affairs, at (909) 697–5220.

Dated: June 6, 2002.

Linda Hansen,

Acting District Manager.

[FR Doc. 02–15963 Filed 6–20–02; 2:01 pm]

BILLING CODE 4310–40–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

(UT–060–1610–DU)

Notice of Intent; Environmental Assessment; Grand Resource Area Management Plan; Moab, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an Environmental Assessment (EA) and consider amending the Grand Resource Area Resource Management Plan (RMP); Moab, Utah.

SUMMARY: Pursuant to the Bureau of Land Management (BLM) Planning Regulations (43 CFR Part 1600) this notice advises the public that the Utah Bureau of Land Management (BLM), Moab Field Office, is considering a proposal which would require amending an existing planning document. The BLM will prepare an Environmental Assessment (EA) and consider amending the 1985 Grand Resource Area RMP to achieve consistency in management of several resources for the Canyon Rims Recreation Area (a Special Recreation Management Area encompassing 100,273 acres of public land located within San Juan County, Utah).

DATES: The comment period for this proposed plan amendment will

commence with publication of this notice. For 30 days from the date of publication of this notice in the **Federal Register**, the BLM will accept comments on this proposal. There will also be opportunity for public comment during the planning process.

ADDRESSES: Comments should be sent to the BLM Moab Field Office, 82 East Dogwood, Avenue, Moab, Utah 84532.

Comments, including names and street addresses of respondents, will be available for public review at the Utah BLM Moab Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the EA and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, 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 will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Katie Stevens, at the above address or telephone (435) 259–2100. Existing planning documents and information are also available at the Moab Field Office.

SUPPLEMENTARY INFORMATION: After interdisciplinary review, no specific planning criteria were determined necessary for this proposed plan amendment. The following preliminary issues have been identified for the proposed plan amendment; they represent the BLM's knowledge to date on the existing issues and concerns with current management:

1. Managing the Recreation Area to maintain its visual quality following objectives established for visual resource management (VRM) classes in the BLM Visual Resource Management System. BLM has inventoried the area and found it to contain VRM Classes II and III. As a result of this analysis of visual resources, a potential impact could be that oil and gas leasing categories may change to ensure consistency. Currently, the Recreation Area contains 53,518 acres in Category 1 (open to oil and gas leasing with standard stipulations) and 46,040 acres in Category 2 (open to oil and gas leasing with special stipulations).

2. Off Highway Vehicle (OHV) designations for the Canyon Rims Recreation Area. The 1985 Grand RMP divided the Recreation Area into two OHV designations. The western portion of the area (40,656 acres) is ''limited to existing roads and trails,'' while the eastern portion (58,306 acres) is in the ''open'' category. As a result of this analysis of OHV designations, a potential impact is that OHV designations could change.

Dated: March 29, 2002.

Robert A. Bennett,

Acting State Director, Utah.

[FR Doc. 02–16002 Filed 6–24–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(WY–920–1320–EL), WYW151634]

Federal Coal, Environmental Impact Statement and Notice of Scoping

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement and notice of scoping for a lease application received from Triton Coal Company for Federal coal in the decertified Powder River Federal Coal Production Region, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) received a competitive coal lease application from Triton Coal Company, LLC (Triton) on August 31, 2000, for a maintenance tract containing approximately 135 million tons of Federal coal and including approximately 933 acres in an area adjacent to the company's Buckskin Mine. This tract, assigned case number WYW151634, is called the West Hay Creek tract. On November 5, 2001, BLM received a request from Triton to modify the West Hay Creek tract to include about 840 acres and 130 million tons of Federal coal. The Buckskin Mine and West Hay Creek tract are located in Campbell County, Wyoming. The tract was applied for as a lease-by-application (LBA) under the provisions of 43 Code of Federal Regulations (CFR) 3425.1. Triton proposes to mine the tract as a maintenance tract for the Buckskin Mine. At the 2001 mining rate of about 19 million tons per year, mining the coal in the West Hay Creek tract would extend the life of the Buckskin Mine by approximately seven years.

The Powder River Regional Coal Team (RCT) reviewed this lease application at a public meeting held on October 25, 2000, in Cheyenne, Wyoming. The RCT recommended that BLM process the application. In order to process the application, BLM must comply with the requirements of the National Environmental Policy Act (NEPA). BLM has determined that the requirements of NEPA would be best served by preparing an environmental impact statement (EIS) for this lease application. The EIS process is beginning with this Notice of Intent and Notice of Scoping. The purpose of the public scoping period and public scoping meeting is to allow interested parties to submit comments and/or relevant information that BLM should consider in preparing a draft EIS and in evaluating the Fair Market Value (FMV) and Maximum Economic Recovery (MER) of the Federal coal included in this coal lease application.

DATES: The scoping period for this Federal coal lease application began on June 1, 2002, and will end July 31, 2002. Scoping comments should be submitted by July 31, 2002, in order to be fully considered in the draft EIS. A public scoping meeting is scheduled for June 26, 2002, at 7 p.m., at the Clarion Western Plaza Hotel, 2009 South Douglas Highway, Gillette, Wyoming.

If you have concerns or issues that you believe the BLM should address in processing this coal lease application, you can express them verbally at the scoping meeting; or you can mail, e-mail or fax written comments to BLM at the addresses given below by July 31, 2002.

ADDRESSES: Please address questions, comments, or concerns to the Casper Field Office, Bureau of Land Management, Attn: Patricia Karbs, 2987 Prospector Drive, Casper, Wyoming 82604, fax them to 307–261–7587, or send e-mail comments to casper—wymail@blm.gov, attn: Patricia Karbs.

FOR FURTHER INFORMATION CONTACT: Patricia Karbs or Nancy Doelger at the above address, or telephone 307–261–7600.

SUPPLEMENTARY INFORMATION: On August 31, 2000, Triton filed a coal lease application for a maintenance tract containing approximately 135 million tons of Federal coal and including approximately 933 acres. This tract, case number WYW151634, is called the West Hay Creek tract. On November 5, 2001, BLM received a request from Triton to modify the West Hay Creek tract for the following lands in Campbell County, Wyoming:

T. 52 N., R. 72 W., 6th P.M., Wyoming
Section 17: Lots 5 (S½ S½), 6 (S½S½), 7 (S½S½), 8 (S½S½), 9–14;
Section 18: Lots 13 (E½), 20 (E½);
Section 19: Lots 5 (E½), 12 (E½), 13 (E½), 20 (E½);
Section 25: Lots 2 (W½, W½E½), 3–6, 7 (W½,W½E½), 10 (W½, W½E½), 11–14.

Containing 838.0975 acres, more or less.

The tract includes an estimated 130 million tons of coal in place. As part of the coal leasing process, BLM will evaluate the tract configuration, and may decide to add or subtract Federal coal to avoid bypassing coal or to increase estimated fair market value.

The Buckskin Mine, which is adjacent to the lease application area, has an approved mining and reclamation plan from the Land Quality Division of the Wyoming Department of Environmental Quality (DEQ). The mine has an approved air quality permit from the Air Quality Division of the Wyoming DEQ to mine up to 27.5 million tons of coal per year.

The Office of Surface Mining Reclamation and Enforcement (OSM) will be a cooperating agency in the preparation of the EIS. If the West Hay Creek LBA tract is leased to the applicant, the new lease must be incorporated into the existing mining plans for the adjacent mine, and the Secretary of the Interior must approve the revised mining plan before the Federal coal in the tract can be mined. OSM is the Federal agency that would be responsible for recommending approval, approval with conditions, or disapproval of the revised mining plan to the Secretary if the tract is leased.

A major issue the BLM has identified related to coal leasing in the Powder River Basin is the need to resolve conflicts between existing and proposed oil and gas development, including coal bed methane, and proposed coal mining on the West Hay Creek LBA tract. Other issues identified include the potential impacts to big game herds and hunting, the potential impacts to sage grouse, the size of the tract as applied for, the need for considering the cumulative impacts of this leasing decision, the validity and currency of the resource data to be used in analyzing the impacts, the impact on existing land uses, the potential impacts to sensitive and endangered species including prairie dogs and mountain plover, and the potential impacts on air and water quality. If you have specific concerns about these issues, or have other concerns or issues that BLM should consider in processing this application, please address them in writing to the above address. Written comments should be received by July 31, 2002, in order to be fully considered in the draft EIS.

Comments, including names and street addresses of respondents, will be available for public review at the address listed above 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: April 17, 2002.

Alan Rabinoff,

Deputy State Director, Minerals and Lands.

[FR Doc. 02–15964 Filed 6–20–02; 2:01 pm]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–02–5101–ER–F333]

Notice of Intent To Prepare an Environmental Impact Statement for the Tracy to Silver Lake Power Line Project

AGENCY: Bureau of Land Management, Carson City Field Office, Nevada, Interior.

ACTION: Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the Tracy to Silver Lake Power Line Project (Project).

SUMMARY: The Bureau of Land Management (BLM), Carson City Field Office intends to prepare an EIS, in cooperation with Washoe County and the Reno-Sparks Indian Colony to analyze the impacts (direct, indirect, and cumulative) resulting from an electrical power line and two substations proposed by Sierra Pacific Power Company. The proposed Project includes the upgrade and extension of an electrical 120 KV transmission line, as well as the construction of two substations, from the existing power plant at Tracy, Nevada to the Silver Lake area near Stead in Washoe County, Nevada. The BLM will work closely with interested parties to identify the best possible alternatives and management decisions that will take into account local, regional, and national needs and concerns. This NOI initiates the public scoping process to identify issues and concerns to be addressed in the EIS.

DATES: The scoping comment period will commence with the publication of this notice. Formal scoping will end 30 days after publication of this notice. Comments on issues and concerns should be received on or before the end of the scoping period at the address listed below. Public meetings will be held throughout the scoping and preparation of the EIS. At least 15 days public notice will be given prior to meetings or activities where the public is invited to attend. Meetings and comment deadlines will be announced through the local and regional news media and the BLM Web site (*www.nv.blm.gov/carson*). In addition to the ongoing public participation process, formal opportunities will be provided through comment on the Draft EIS (60-day comment period) and the Final EIS (30-day comment period).

ADDRESSES: Written comments should be sent via U.S. Mail to: BLM Carson City Field Office, Attn: Sierra EIS Project Manager, 5665 Morgan Mill Road, Carson City, NV 89701. In addition, comments may be sent via fax at (775) 885–6147 or electronic mail to *d2parker@nv.blm.gov*. Comments, including names and street addresses of respondents, will be available for public review at the above address during regular business hours (7:30 a.m.–5 p.m.), Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. However, we will not consider anonymous comments. 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.

FOR FURTHER INFORMATION: For further information and/or to have your name added to our mailing list, contact David Parker (775) 885–6076 or Terri Knutson (775) 885–6156, BLM Carson City Field Office, Carson City, Nevada.

SUPPLEMENTARY INFORMATION: The EIS will address issues brought forth through scoping and will be evaluated by an interdisciplinary team of BLM, Washoe County, and Reno-Sparks Indian Colony specialists. A range of alternatives and mitigating measures will be considered to evaluate and minimize environmental impacts and to assure that the proposed actions do not result in undue or unnecessary degradation of public lands. Federal, State, and local agencies and other individuals or organizations who may

be interested in or affected by the BLM decision on the Tracy to Silver Lake Power Line Project are urged to participate in the EIS process. It is important that those interested in the proposed activities participate in the scoping and commenting processes of the EIS. To be most helpful, comments should be as specific as possible.

Dated: May 14, 2002.

John Singlaub,

Manager, Carson City Field Office.

[FR Doc. 02–16005 Filed 6–24–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–110–1060–DU]

Notice of Intent To Prepare an Environmental Assessment and Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to Prepare an Environmental Assessment (EA) for an Amendment to the White River Resource Management Plan (RMP) Regarding Management of Wild Horses in the West Douglas Herd Area.

SUMMARY: The Bureau of Land Management (BLM), White River Field Office proposes to prepare an EA and consider an amendment to the White River RMP regarding management of wild horses in the West Douglas Herd Area. The purpose of this planning process is to identify the most appropriate strategy for management of wild horses in the West Douglas Herd Area of the White River Resource Area, while protecting resource values, providing for multiple uses, and improving the health of public lands. The planning process will allow BLM, with integrated public involvement, to develop and conduct detailed analysis of a full range of alternatives specifically focused on wild horses and other resources within this herd area. BLM has determined that such detail and focus may not have been sufficiently addressed and documented in the current RMP, which has a resource-area-wide scope. BLM will hold public meetings in Rangely and Grand Junction, CO, to share information and identify specific concerns and issues pertaining to this plan amendment.

DATES: The official public scoping period for this planning effort commences with the publication of this notice. The public is invited to submit scoping comments to the address listed below until August 26, 2002. BLM will publish exact dates, times, and locations for public meetings through media announcements, internet postings, and mailings at least 15 days in advance of the meetings.

ADDRESSES: Send scoping comments to the White River Field Office, Bureau of Land Management, 73544 Hwy 64, Meeker, CO 81641, or e-mail *scott_pavey@co.blm.gov.*

SUPPLEMENTARY INFORMATION: The West Douglas Herd Area is located in Rio Blanco County, within the southwestern portion of the White River Resource Area in Northwestern Colorado. It contains 123,390 acres of public, and 4,754 acres of private land. The herd area also encompasses Texas and Oil Spring Mountains; portions of Douglas, Missouri, and Texas Creek Watersheds; a portion of the Oil Springs Mountain Wilderness Study Area; and a portion of the Canyon Pintado National Historic District.

BLM invites the public to identify issues that they feel should be addressed during the planning process. Thus far, BLM has identified the following preliminary issues:

Issue 1: Wild Horse Management. Have all reasonable management options been considered and analyzed? Do management alternatives meet statutory requirements?

Issue 2: Wilderness. Can wild horse management activities and wilderness values within Oil Spring Mountain Wilderness Study Area co-exist?

Issue 3: Oil and Gas Development. Will there be additional stipulations for oil and gas development? Will oil and gas development cause wild horses to disperse into areas outside of the herd area?

Issue 4: Forage Allocation. What proportions of available forage should be allocated to livestock, wild horses, and wildlife?

Public participation will be an essential component of this planning process. Anyone wishing to be placed on the BLM mailing list for this action should contact the person listed below or mail a letter containing contact information to the White River Field Office (address listed earlier in this notice). BLM will review all comments and take them into consideration when developing the Environmental Assessment and the plan amendment.

FOR FURTHER INFORMATION CONTACT: Scott Pavey, Planning and Environmental Coordinator, White River Field Office (970) 878–3831, E-mail: *scott_pavey@co.blm.gov.*

Dated: March 25, 2001.

James A. Cagney,

Associate Field Manager.

Editorial Note: This document was received in the Office of the Federal Register on June 20, 2002.

[FR Doc. 02–16010 Filed 6–24–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–02–1220–AA]

Notice of Public Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session on Friday, June 28, 2002, from 8 a.m. to 5 p.m. and Saturday, June 29, from 8 a.m. to 3 p.m. The meeting will be held at the Barstow Community College, located at 2700 Barstow Road, Barstow, California.

Agenda items for the Council meeting will include the following topics:

—Review of District Advisory Council charter, Council role and function
—Election of Officers
—Public Comment for items not on the agenda (Friday morning)
—Overview and update on the West Mojave Plan
—Status report on current District Planning efforts: Northern and Eastern Colorado Plan, Northern and Eastern Mojave Plan, Draft BLM Coachella Valley Plan Amendment—Environmental Impact Statement, Draft Western Colorado Plan, Draft Imperial Sand Dunes Recreation Area Resource Management Plan
—Plan Implementation strategies and priorities
—Council involvement in future Districtwide projects
—Public comment (Saturday afternoon)
—Select future Council meeting date(s), location(s), and agenda topics

All Desert District Advisory Council meetings are open to the public. Time for public comment is scheduled at the beginning of the meeting for topics not on the agenda, and will be made available by the Council Chairman during the presentation of various agenda items. Time for public comment is also scheduled at the end of the meeting.

Written comments may be filed in advance of the meeting for the

California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Doran Sanchez, BLM California Desert District Public Affairs Specialist, (909) 697–5220.

Dated: June 6, 2002.

Linda Hansen,

Acting District Manager.

[FR Doc. 02–15965 Filed 6–20–02; 2:01 pm]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR110–5880–PB; HAG02–0258]

Correction to Notice of Meetings for Medford District Resource Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to notice of meetings for Medford District Resource Advisory Committee.

This notice was previously published in the **Federal Register:** Vol. 67, No. 97/ page 35572, Monday May 20, 2002.

SUMMARY: The **Federal Register** Notice has an incorrect date for a Medford District Resource Advisory Committee field trip. The correct date is July 25, 2002.

The Medford District Resource Advisory Committee will meet in Medford to tour project sites and to discuss proposed 2003 projects on July 11, 2002, July 25, August 8, 2002, and August 22, 2002. The field trips on July 11, 2002 and July 25, 2002 will begin at 7 am. The meetings on August 8, 2002 and August 22, 2002 will begin at 10 am. A public comment period will be held from 2 pm to 2:30 pm. The field trips and meetings are expected to adjourn at 4 pm.

FOR FURTHER INFORMATION CONTACT: Karen Gillespie, Medford District Office (541–618–2424).

Dated: June 6, 2002.

Aaron Horton,

Acting District Manager.

[FR Doc. 02–16001 Filed 6–24–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–056–01–1120–JG; H5AC GP2–0058]

Notice of Seasonal Motor Vehicle Closure on Selected Public Lands East of Prineville Reservoir, Crook County, OR

AGENCY: Bureau of Land Management, Prineville District, Deschutes Resource Area, Oregon, Interior.

ACTION: A proposed seasonal closure to motorized vehicle use on certain public lands administered by the Bureau of Land Management (BLM), Deschutes Resource Area, Prineville District, Oregon.

SUMMARY: The BLM is proposing the seasonal closure of certain public lands east of Prineville Reservoir in Crook County from December 1 to May 1 to the use of motorized vehicles.

The purpose of this seasonal closure is to provide safe habitat and forage for wildlife. The area has been identified as crucial mule deer winter range by the Oregon Department of Fish and Wildlife (ODFW), who estimates the wintering population at approximately 300–500 deer. The resident deer population is estimated at approximately 300 head. Present habitat conditions for wintering mule deer are considered fair to good. Elk also inhabit the area in fairly large numbers. Additionally, poaching of big game has been a problem within the area in part due to the road density and limited restrictions on vehicle travel.

Road improvements along with the posting of signs along the designated travel route and the public's observance of traveling only on the designated travel route will reduce soil erosion, improve water quality, improve stream channel and riparian vegetative conditions, improve wildlife habitat, and reduce disturbance to wildlife within the Sand Creek, Sanford Creek, and Deer Creek subwatersheds in accordance with the Upper Prineville Reservoir Activity Plan Environmental Assessment (EA No. OR–056–2–010) and the Brothers/La Pine Resource Management Plan (1989). The soils in the area are known to be steep, shallow, and well-drained yielding medium runoff with a moderate erosion hazard. Current use of motorized vehicles within the area causes increased erosion and soil loss on unstable roads and vehicle trails within the subwatersheds. Compaction of soil by these vehicles inhibits growth of vegetation and also increases runoff. Sand Creek, Sanford Creek, and Deer Creek flow to the northwest through the subject site thereby transporting a large quantity of this eroded soil to Prineville Reservoir ultimately reducing the effectiveness of Prineville Reservoir.

DATES: This closure will take effect upon the published date of this notice or December 1, 2001, whichever is later. The closure is effective annually from December 1 to May 1.

FOR FURTHER INFORMATION CONTACT: Robert Towne, Deschutes Resource Area Field Manager, 3050 NE 3rd Street, Prineville, Oregon 97754, telephone (541) 416–6700. The maps and Environmental Assessment pertaining to this closure can be viewed on the Internet at: *www.or.blm.gov/Prineville/planning/EAs/ea_00_095.pdf.*

Discussion of the Rules: A gate has been installed at the junction of Doubtful Dirt Road and the unnamed road that provides access to the seasonally closed lands. This junction is located approximately at the center of Section 10, Township 17 South, Range 17 East. A public information kiosk displaying a detailed map of the affected area has also been installed at this junction. Handout maps of the same are also available at the kiosk. In addition, signs have been placed along the designated travel route within the affected area to aid in route navigation during the open season The designated travel route has had some construction improvements for the same purpose.

The public lands affected by this closure are all lands administered by the BLM in Sections 25, 26, 34, 35, and 36 of Township 16 South, Range 17 East; Section 30 of Township 16 South, Range 18 East; Sections 1, 2, 3, 10, 11, 12, 13, 14, and 15 of Township 17 South, Range 17 East; Sections 6, 7, and 18 of Township 17 South, Range 18 East Willamette Meridian, Oregon. Doubtful Dirt Road will remain open continuously. This area is known as Deer Creek, Sanford Creek, and Sand Creek Watersheds. Closure signs will be posted at all road entry points. Maps of the closure area may be obtained from the Prineville District Office or the public information kiosk at the east end of Doubtful Dirt Road.

Prohibited Act: Under 43 CFR 8364.1, the Bureau of Land Management will enforce the following rule within the Deer Creek, Sanford Creek, and Sand Creek closure area:

i. Operation of motorized vehicles is prohibited December 1 to May 1.

ii. Cutting and/or removal of firewood is not allowed.

Exemptions: Persons who are exempt from this rule include any Federal, State, or local officer or employee in the scope of their duties, members of any

organized rescue or fire-fighting force in performance of an official duty, and any person authorized in writing by the Bureau of Land Management.

Penalties: The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7. Any person who violates this closure may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: December 17, 2001.

A. Barron Bail,

District Manager.

Editorial Note: This document was received in the Office of the Federal Register on June 21, 2002.

[FR Doc. 02–16011 Filed 6–24–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–010–02–1430–EU; WYW–152430]

Notice of Realty Action: Direct Sale of Public Lands, Hot Springs County, Worland Field Office, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Hot Springs County, Wyoming have been examined and found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the appraised fair market value. This land will not be offered for sale until at least 60 days after the date of this notice.

Sixth Principal Meridian

T. 46 N., R. 99 W.
Section 13, S½SW¼SE¼,
S½N½SW¼SE¼

Containing approximately 30 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice in the **Federal Register**, whichever occurs first. This land is being offered by direct sale to Ken Carswell, who is the owner of sawmill facilities located on the site, authorized under a lease. It has been determined that the subject parcel contains valuable oil and gas deposits, but no other minerals of value. Therefore those mineral interests without value may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests. The patent, when issued, will contain certain reservations to the United States and will be subject to rights-of-way and mineral leases of record. Detailed information concerning this action is available for review at the Worland Field Office, Bureau of Land Management, 101 S. 23rd St. (P.O. Box 119), Worland, Wyoming 82401–0119.

EFFECTIVE DATES: Written or e-mail comments may be submitted through August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Steve Till, Worland Field Office, P.O. Box 119 [101 South 23rd Street], Worland, Wyoming 82401–0119. (307) 347–5100.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance of the lands to the Worland Field Manager, at P.O. Box 119, Worland, Wyoming 82401–0119 or by e-mail to *worland_wymail@blm.gov.* In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior. Comments, including names and street addresses of respondents will be available for public review at the Worland Field Office during regular business hours (7:45 a.m. to 4:30 p.m.) Monday through Friday, except holidays.

Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. 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 22, 2002.

Darrell Barnesk,

Worland Field Manager.

[FR Doc. 02–16006 Filed 6–24–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of the following described lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., on the dates specified:

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines, and the subdivision of section 25, the survey of a portion of the 2000 meanders of the left bank of the North Fork of the Payette River in section 25, and the survey of certain islands (designated as lots 13 and 15) in the North Fork of the Payette River in section 25, T. 14 N., R. 3 E., Boise Meridian, Idaho, was accepted July 6, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the subdivision of section 2, T. 6 S., R. 9 E., Boise Meridian, Idaho, was accepted July 13, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the subdivisional lines of T. 15 S., R. 23 E., Boise Meridian, Idaho, was accepted July 17, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the east and north boundaries, subdivisional lines, and of the 1910 meanders of the left bank of the Boise River, and the dependent resurvey of the subdivision of section 4 and of former lot 6 in section 4, and the subdivision of sections 3, 10, 11, 13, 14, 15, 23, 24, 25, the further subdivision of section 4, and the survey of the 2000 meanders of a portion of the left bank of the Diversion Dam Pool, T. 2 N., R. 3 E., Boise Meridian, Idaho, and the plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 19, and a metes-and-bounds survey in section 19, T. 2 N., R. 4 E., Boise Meridian, Idaho, were accepted on July 31, 2001. The plats were prepared to meet certain

administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the south boundary, the subdivisional lines, the subdivision of section 36, and the 1891 adjusted meanders of the right bank of the Clearwater River, and the additional subdivision of section 36, and the survey of lots 7, 8, 9 and 10 of section 36, T. 34 N., R. 3 E., Bosie Meridian, Idaho, was accepted on September 28, 2001. The plat was prepared to meet certain administrative needs of the Northern Idaho Agency, Bureau of Indian Affairs.

FOR FURTHER INFORMATION CONTACT: Duane Olsen, Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657, 208–373–3980.

Dated: September 28, 2001.

Harry K. Smith,

Acting Chief, Cadastral Surveyor of Idaho.

Editorial Note: This document was received in the Office of the Federal Register on June 20, 2002.

[FR Doc. 02–16003 Filed 6–24–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–9820–BJ–P]

Filing of Plats of Survey; Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

The plat representing the dependent resurvey of a portion of the Eighth Standard Parallel North, through Range 53 West, portions of the west and north boundaries, and a portion of the subdivisional lines, and the subdivision of certain sections, T. 33 N., R. 53 W., Sixth Principal Meridian, Nebraska, Group No. 139, was accepted May 31, 2002.

FOR FURTHER INFORMATION CONTACT: John P. Lee, (307) 775–6216, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

Dated: May 31, 2002.

John P. Lee,

Chief Cadastral Surveyor for Wyoming.

[FR Doc. 02–16009 Filed 6–24–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP02–0245]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 21 S., R. 7 W., accepted April 19, 2002
T. 31 S., R. 6 W., accepted April 19, 2002
T. 10 S., R. 1 E., accepted April 19, 2002
T. 30 S., R. 4 W., accepted April 19, 2002
T. 4 S., R. 4 E., accepted May 3, 2002
T. 26 S., R. 10 W., accepted May 10, 2002

Washington

T. 28 N., 15 W., accepted April 19, 2002
T. 34N., R. 27 E., accepted May 3, 2002
T. 35 N., R. 37 E., accepted May 20, 2002

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plats(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (333 SW. 1st Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: May 24, 2002.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 02–16012 Filed 6–24–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP02–0181]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 24S., R. 29E., accepted April 5, 2002
T. 35S., R. 1E., accepted April 11, 2002
T. 17S., R. 36E., accepted April 11, 2002

Washington

T. 15 N., 4 W., accepted January 9, 2002
T. 18 N., R. 20 E., accepted March 27, 2002
T. 24 N., R. 13 W., accepted March 27, 2002

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that the wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (333 SW. 1st Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: April 12, 2002.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 02–16013 Filed 6–24–02; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–1420–BJ–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

The plat representing the dependent resurvey of a portion of the Sixth Standard Parallel North, through Ranges 87 and 88 West, the Eleventh Guide Meridian West, through Township 24 North, between Ranges 88 and 89 West, portions of the south and east boundaries, and subdivisional lines, T. 24 N., R. 88 W., Sixth Principal Meridian, Wyoming, Group No. 636, was accepted January 23, 2002.

The plat representing the dependent resurvey of a portion of the Sixth Standard Parallel North, through Ranges 88 and 89 West, a portion of the west boundary and the subdivisional lines, T. 24 N., R. 89 W., Sixth Principal Meridian, Wyoming, Group No. 636, was accepted January 23, 2002.

The plat representing the dependent resurvey of a portion of the Twelfth Auxiliary Guide Meridian West, through Township 33 North, between Ranges 100 and 101 West, and a portion of the subdivisional lines, and the subdivision of certain sections, T. 33 N., R. 100 W., Sixth Principal Meridian, Wyoming, Group No. 660, was accepted January 23, 2002.

The plat representing the corrective dependent resurvey of Tract 37 and portions of Tracts 40 and 41, and the dependent resurvey of portions of the west boundary, subdivisional lines, and the subdivision of section lines, T. 51 N., R. 97 W., Sixth Principal Meridian, Wyoming, Group No. 661, was accepted January 23, 2002.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 7, 17 and 18, T. 14 N., R. 84 W., Sixth Principal Meridian, Wyoming, Group No. 667, was accepted January 23, 2002.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 26, T. 26 N., R. 84 W., Sixth Principal Meridian, Wyoming, Group No. 670, was accepted January 23, 2002.

The plat representing the subdivision of section 11, T. 2 N., R. 5 W., and the survey of a portion of the Wind River Roadless and Wild Area Boundary, through Townships 2 and 3 North, Range 5 West, and Township 3 North, Range 6 West, Wind River Meridian, Wyoming, Group 677, was accepted January 23, 2002.

FOR FURTHER INFORMATION CONTACT: John P. Lee, (307) 775–6216, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

Dated: February 6, 2002.

John P. Lee,

Chief Cadastral Surveyor for Wyoming.

[FR Doc. 02–16007 Filed 6–24–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–1420–BJ–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

The plat representing the dependent resurvey of a portion of the west boundary and the subdivisional lines, and the subdivision of section 7, T. 44 N., R. 62 W., Sixth Principal Meridian, Wyoming, Group No. 662, was accepted May 31, 2002.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 12, T. 44 N., R. 63 W., Sixth Principal Meridian, Wyoming, Group No. 662, was accepted May 31, 2002.

The plat representing the dependent resurvey of the west boundary, a portion of the north boundary, and the subdivisional lines, T. 54 N., R. 74 W., Sixth Principal Meridian, Wyoming, Group No. 675, was accepted May 31, 2002.

The plat representing the informative traverse of the western right of way of Burlington Northern Railroad, with the division of certain subdivisions into lots to accommodate a proposed land exchange in sections 22 and 27, T. 42 N., R. 71 W., Sixth Principal Meridian, Wyoming, Group No. 695, was accepted May 31, 2002.

The plat representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, and the subdivision of sections 18 and 20, T. 17 N., R. 77 W., Sixth Principal Meridian, Wyoming, Group No. 689, was accepted May 31, 2002.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 24, T. 17 N., R. 78 W., Sixth Principal Meridian, Wyoming, Group No. 689, was accepted May 31, 2002.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 14, T. 28 N., R. 97 W., Sixth Principal Meridian, Wyoming, Group No. 697, was accepted May 31, 2002.

The plat representing the dependent resurvey of the north boundary and the subdivisional lines, T. 54 N., R. 75 W., Sixth Principal Meridian, Wyoming, Group No. 679, was accepted May 31, 2002.

The plat representing the dependent resurvey of a portion of Tract 45, a portion of the subdivisional lines, and the subdivision of sections 11 and 14, T. 50 N., R. 90 W., Sixth Principal Meridian, Wyoming, Group No. 698, was accepted May 31, 2002.

FOR FURTHER INFORMATION CONTACT: John P. Lee, (307) 775–6216, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

Dated: May 31, 2002.

John P. Lee,

Chief Cadastral Surveyor for Wyoming.

[FR Doc. 02–16008 Filed 6–24–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–010–1060–ET; WYW 152420]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, proposes to withdraw 1,960.10 acres of public land to protect wild horse and wildlife habitat, and watershed, recreation, cultural, and scenic values within the Pryor Mountain Wild Horse Range. This notice closes the land for up to 2 years from location and entry under the general land laws, including the mining laws, subject to valid existing rights.

DATES: Comments must be received by September 23, 2002.

ADDRESSES: Comments and meeting requests should be sent to the State

Director, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800.

FOR FURTHER INFORMATION CONTACT: Sandy Ward, BLM Montana State Office, 406–896–5052 or Janice MaChipiness, BLM, Billings Field Office, P.O. Box 36800, Billings, Montana 59107–6800, 406–896–5263.

SUPPLEMENTARY INFORMATION: On September 17, 2001, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following-described land from settlement, sale, location and entry under the general land laws, including location and entry under the mining laws, but not from leasing under the mineral leasing laws:

Sixth Principle Meridian, Wyoming

T. 58 N., R.. 95 W.,
Sec. 19, lot 2 and SE¼NE¼;
Sec. 20, N½S½, SE¼SW¼, and S½SE¼;
Sec. 21, Southwest Diagonal Half SW¼;
Sec. 23, NE¼SW¼;
Sec. 26, SW¼NW¼ and W½SW¼;
Sec. 27, S½;
Sec. 28, NW¼NE¼, S½NE¼, and S½;
Sec. 29, NE¼, NE¼NW¼, and NE¼SE¼;
Sec. 33, NE¼ and NE¼NW¼;
Sec. 34, NW¼.
The above-described land contains 1,960.10 acres in Big Horn County, Wyoming.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above, subject to valid existing rights, unless the proposal is denied or canceled or the withdrawal is finalized prior to that date. Non-surface disturbing activities of a temporary nature which will not significantly impact the values to be protected by the withdrawal may be allowed with the approval of the authorized officer of the BLM during the segregative period.

Dated: September 27, 2001.

Howard A. Lemm,

Acting Deputy State Director, Division of Resources.

Editorial Note: This document was received in the Office of the Federal Register on June 20, 2001.

[FR Doc. 02–16004 Filed 6–24–02; 8:45 am]
BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (the AMWG), a technical work group (the TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

DATE AND LOCATION: The Glen Canyon Dam Adaptive Management Work Group will conduct the following public meeting:

Phoenix, Arizona—July 17–18, 2002. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and will begin at 8 a.m. and conclude at 12 noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, Conference Rooms A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting will be to discuss experimental flows, non-native fish control, the Strategic Plan, Information Needs, FY 2004 AMP Budget, public outreach, environmental compliance, and other administrative and resource issues pertaining to the AMP.

DATE AND LOCATION: The Glen Canyon Dam Technical Work Group will conduct the following public meeting:

Phoenix, Arizona—August 15–16, 2002. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and will begin at 8 a.m. and conclude at 2 p.m. on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, Conference Rooms A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting will be to discuss the management objectives and information needs as contained in the Draft Strategic Plan, science plan for experimental flows and temperature control device, non-native fish control, 2001 monitoring results, Integrated Water Quality Plan, the State of Natural and Cultural Resources in the Colorado River Ecosystem (SCORE Report), environmental compliance, and other administrative and resource issues pertaining to the AMP.

Agenda items may be revised prior to any of the meetings. Final agendas will be posted 15 days in advance of each meeting and can be found on the Bureau of Reclamation Web site under Environmental Programs at: *http://www.uc.usbr.gov*. (providing the Reclamation Web site is available). If not, they may request a faxed copy of the proposed agenda by calling (801) 524–3880. Time will be allowed on each agenda for any individual or organization wishing to make formal oral comments (limited to 10 minutes) at the meetings.

To allow full consideration of information by the AMWG or TWG members, written notice must be provided to Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3758; faxogram (801) 524–3858; e-mail at *rpeterson@uc.usbr.gov* at least FIVE (5) days prior to the meeting. Any written comments received will be provided to the AMWG and TWG members at their respective meetings.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; *rpeterson@uc.usbr.gov*.

Dated: June 6, 2002.

Randall V. Peterson,

Manager, Adaptive Management and Environmental Resources Division.

[FR Doc. 02–15936 Filed 6–24–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0054, 1029–0067 and 1029–0083

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for 30 CFR part 872, Abandoned mine reclamation funds; 30 CFR part 705 and the Form OSM–23, Restriction on financial interests of State employees; and 30 CFR 955 and the Form OSM–74, Certification of Blasters in Federal program States and on Indian lands have been forwarded to the Office of Management and Budget (OMB) for review and reauthorization. The information collection packages were previously approved and assigned clearance numbers 1029–0054 for 30 CFR part 872, 1029–0067 for the OSM–23 form, and 1029–0083 for the OSM–74 form. This notice describes the nature of the information collection activities and the expected burdens and costs.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB July 25, 2002, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). OSM has submitted requests to OMB to renew its approval for the collections of information for 30 CFR part 872, Abandoned mine reclamation funds; 30 CFR part 705 and the Form OSM–23, Restriction on financial interests of State employees; and 30 CFR part 955 and the Form OSM–74, Certification of Blasters in Federal program States and on Indian lands. OSM is requesting a 3-year term of approval for these information collection activities.

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 these collections of information are listed in 30 CFR 872.10, which is 1029–0054; on the form OSM–23 and in 30 CFR 705.10, which is 1029–0067; and on the form OSM–74 and in 30 CFR 955.10, which is 1029–0083.

As required under 5 CFR 1320.8(d), **Federal Register** notice soliciting comments on these collections of information was published on March 28, 2002 (67 FR 14972). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Abandoned mine reclamation funds, 30 CFR part 872.

OMB Control Number: 1029–0054.

Summary: 30 CFR part 872 establishes a procedure whereby States and Indian tribes submit written statements announcing the State/Tribe's decision not to submit reclamation plans, and therefore, will not be granted AML funds.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State and Tribal abandoned mine land reclamation agencies.

Total Annual Responses: 1.

Total Annual Burden Hours: 1.

Title: Restrictions on financial interests of State employees, 30 CFR part 705.

OMB Control Number: 1029–0067.

Summary: Respondents supply information on employment and financial interests. The purpose of the collection is to ensure compliance with section 571(g) of the Surface Mining Control and Reclamation Act of 1977, which places an absolute prohibition on having a direct or indirect financial interest in underground or surface coal mining operations.

Bureau Form Number: OSM–23.

Frequency of Collection: Entrance on duty and annually.

Description of Respondents: Any State regulatory authority employee or member of advisory boards or commissions established in accordance with State law or regulation to represent multiple interests who performs any function or duty under the Surface Mining Control and Reclamation Act.

Total Annual Responses: 2,909.

Total Annual Burden Hours: 974.

Title: Certification of blasters in Federal program States and on Indian lands—30 CFR part 955.

OMB Control Number: 1029–0083.

Summary: This information is being collected to ensure that the applicants for blaster certification are qualified. This information, with blasting tests, will be used to determine the eligibility of the applicant. The affected public will be blasters who want to be certificated by the Office of Surface Mining Reclamation and Enforcement to conduct blasting on Indian lands or in Federal primacy States.

Bureau Form Number: OSM–74.

Frequency of Collection: On occasion.

Description of Respondents: Individuals intent on being certified as blasters in Federal program States and on Indian lands.

Total Annual Responses: 33.

Total Annual Burden Hours: 57.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence, 1029–0054 for 30 CFR part 872, 1029–0067 for the OSM–23 form, and 1029–0083 for the OSM–74 form.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503, and to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210–SIB, Washington, DC, 20240.

Dated: May 29, 2002.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 02–15946 Filed 6–24–02; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0043, 1029–0111 and 1029–0112

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collections of information for 30 CFR part 761, Areas designated by Act of Congress; 30 CFR part 772, Requirements for coal exploration; and 30 CFR part 800, Bonding and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

DATES: Comments on the proposed information collection activities must be received by August 26, 2002 to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783 or via e-mail at the address listed above.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that OMS will be submitting to OMB for approval. These collections are contained in (1) 30 CFR part 761, Areas designated by Act of Congress; (2) 30 CFR part 772, Requirements for coal exploration; and (3) 30 CFR part 800, Bonding and insurance requirements for surface coal mining and reclamation operations under regulatory programs. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Areas designated by Act of Congress, 30 CFR part 761.

OMB Control Number: 1029–0111.

Summary: OSM and State regulatory authorities use the information collected under 30 CFR part 761 to ensure that persons planning to conduct surface coal mining operations on the lands protected by section 522(e) of the Surface Mining Control and Reclamation Act of 1977 have the right to do so under one of the exemptions or waivers provided by this section of the Act.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for certain surface coal mine permits and State regulatory authorities.

Total Annual Responses: 262.

Total Annual Burden Hours: 1,864.

Title: Requirements for coal exploration, 30 CFR part 772.

OMB Control Number: 1029–0112.

Summary: OSM and State regulatory authorities use the information collected under 30 CFR part 772 to maintain knowledge of coal exploration activities, evaluate the need for an exploration permit, and ensure that exploration activities comply with the environmental protection and reclamation requirements of 30 CFR parts 772 and 815 and section 512 of SMCRA (30 U.S.C. 1262).

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Persons planning to conduct coal exploration and State regulatory authorities.

Total Annual Responses: 905.

Total Annual Burden Hours: 8,510.

Title: Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs, 30 CFR part 800.

OMB Control Number: 1029–0043.

Summary: The regulations at 30 CFR part 800 primarily implement § 509 of the Surface Mining Control and Reclamation Act of 1977, which requires that persons planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulations also establish bond release requirements and procedures consistent with section 519 of the Act, liability insurance requirements pursuant to section 507(f) of the Act, and procedures for bond forfeiture should the permittee default on reclamation obligations.

Bureau Form Number: None.

Frequency of Collection: On Occasion.

Description of Respondents: Surface coal mining and reclamation permittees and State regulatory authorities.

Total Annual Responses: 14,167.

Total Annual Burden Hours: 166,176 hours.

Dated: May 28, 2002.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 02–15947 Filed 6–24–02; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–452]

Certain Personal Watercraft and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting a joint motion to terminate the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S.

International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain personal watercraft and components thereof on March 9, 2001, based on a complaint filed by Yamaha Hatsudoki Kabushiki Kaisha, dba Yamaha Motor Company, Ltd., and Sanshin Kogyo Kabushi Kaisha, dba Sanshin Industries, Ltd. (collectively, ''Yamaha'') of Japan. 66 FR 14937. The respondents named in the notice of investigation are Bombardier, Inc. of Canada and Bombardier Motor Corporation of America of Wausau, Wisconsin (collectively ''Bombardier''). Yamaha's complaint alleged that Bombardier's products infringed claims of 11 different patents held by Yamaha.

On May 13, 2002, Yamaha and Bombardier entered into a settlement agreement, and on May 24, 2002, Yamaha and Bombardier filed a joint motion to terminate the investigation on the basis of that settlement agreement. The Commission investigative attorney supported the joint motion. On June 3, 2002, the presiding ALJ issued an ID (Order No. 105) granting the motion to terminate the investigation. No party petitioned for review of the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42).

Issued: June 20, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–15968 Filed 6–24–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Appointment of Individuals To Serve as Members of Performance Review Boards

AGENCY: International Trade Commission.

ACTION: Appointment of individuals to serve as members of Performance Review Board.

EFFECTIVE DATE: June 17, 2002.

FOR FURTHER INFORMATION CONTACT: David W. Burns, Acting Director of Personnel, U.S. International Trade Commission, (202) 205–2651.

SUPPLEMENTARY INFORMATION: The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB):

Chairman of PRB—Vice-Chairman Jennifer A. Hillman
Member—Commissioner Lynn M. Bragg
Member—Commissioner Marcia E. Miller
Member—Commissioner Stephen Koplan
Member—Robert A. Rogowsky
Member—Lyn M. Schlitt
Member—Stephen A. McLaughlin
Member—Eugene A. Rosengarden
Member—Lynn Featherstone
Member—Vern Simpson
Member—Lynn I. Levine
Member—Robert B. Koopman

Notice of these appointments is being published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: June 17, 2002.

By order of the Chairman.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–15679 Filed 6–24–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning a series of proposed new collections of data from state workforce agencies and local workforce investment areas on issues relating to the implementation and operation of programs authorized by the Workforce Investment Act.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before August 26, 2002.

ADDRESSES: Kerri Vitalo, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Ave., NW., Room N–5637, Washington, DC 20210; 202–693–3912 (this is not a toll-free number); *kvitalo@doleta.gov*; Fax: 202–693–2766 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor's Employment and Training Administration (ETA) seeks to collect data from state workforce agencies and local workforce investment areas on issues relating to the governance, administration, funding, service design, and delivery structure of workforce programs authorized by the Workforce Investment Act (WIA). Enacted in 1998, WIA represents a substantial redesign of the workforce development system. With the goal of improving the responsiveness of government services and enhancing customer choice, this legislation calls for the establishment of new planning bodies, mandates that over a dozen separately funded federal programs work together to streamline workforce services, requires new service designs and delivery systems, and establishes new accountability requirements.

In light of its needs for information on WIA operations on a quick-turnaround

basis, ETA is seeking clearance for a series of eight (8) to twenty (20) separate surveys to be administered over the next three years. Each survey will be relatively short (10–30 questions) and, depending on the nature of the survey, may be administered to state workforce agencies, local Workforce Boards, One-Stop Centers, Employment Service offices, or other local-area WIA partners. Each survey will be designed on an ad hoc basis over the three-year period, and will focus on emerging topics of pressing policy interest. Each survey will either cover the universe of respondents or a properly drawn random sample.

Question lists would be developed through short, structured brainstorming sessions involving key policy and program staff from each relevant national and regional office and division in ETA.

Examples of broad topic areas include:

- Local policies and practices promoting a ''work-first'' approach to workforce development
- The status of local Management Information System developments
- The scope and content of intensive services and training services
- Procedures used to orient customers to service choices and access points
- The status of policies and practices relating to Eligible Training Providers
- Program registration practices
- Local and state policies on Individual Training Accounts, including dollar caps and time limits on the training that will be funded
- The background and experience of, and training provided for, staff delivering intensive services
- The extent of integration of Employment Services operations and other partners (Vocational Rehabilitation, Temporary Assistance to Needy Families, etc.) into One-Stop Centers
- Local Workforce Investment Board membership and training

Quick turnaround surveys are needed for a number of reasons. The most pressing concerns the need to understand key operational issues in light of the coming reauthorization of not only WIA, but also of the Temporary Assistance to Needy Families (TANF) Block Grant and multiple programs which are mandatory partners of the WIA system (such as vocational education, adult education, higher education, and vocational rehabilitation). Beyond WIA/TANF reauthorization, ETA also needs to keep abreast of the challenges and impediments that states and local areas are encountering in order to discharge its obligation to issue policy guidance, provide technical assistance, and accurate information, and promote continuous improvement. These obligations can only be met if ETA has timely information that also identifies the scope and magnitude of various practices or problems. This need is particularly acute given that the workforce development system has been evolving rapidly in the several years since WIA was enacted and new issues and concerns are constantly surfacing.

The information being requested by the quick turnaround surveys is not otherwise available. Other research and evaluation efforts, including case studies or long-range studies, either cover only a limited number of sites or take many years for data to be gathered and analyzed. Administrative information and data are too limited: The five-year Workforce Investment Plans, developed by states and local areas, are too general in nature to meet ETA's specific informational needs and may be updated as infrequently as only once every five years; existing quarterly or annual reporting requirements of states and local areas provide some information, but primarily about cost outlays and the number and characteristics of clients served and their outcomes; and participant outcome data does not provide information on key operational practices and issues. Thus, ETA has no alternative mechanism for collecting information that both identifies the scope and magnitude of emerging WIA implementation issues and provides the information on a quick-turnaround ''real-time'' basis.

ETA will make every effort to coordinate the quick-turnaround surveys with other ongoing research it is conducting, in order to ease the burden on local and state respondents, to avoid duplication, and to explore fully how interim data and information from each study can be used to inform the other studies. Information from the quick response surveys will provide ''just-in-time'' information that complements but does not duplicate other ETA reporting requirements or evaluations studies.

II. Review Focus

The Department of Labor is particularly interested in comments that: (a) Evaluate whether the proposed collection strategy of administering quick turnaround surveys is supportive of key performance functions of the agency, including whether the information has practical utility to support continuous improvement of the workforce investment programs, WIA policy decisions and guidance, and workforce investment strategies; (b) evaluate the approach and accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine the upper and lower bounds for survey burden hours and the approach used to estimate annualized burden hours and costs; (c) provide comments and input on possible topic areas to be considered for quick turnaround surveys; and (d) 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 submissions of responses.

III. Current Actions

DOL is seeking Office of Management and Budget approval for immediate clearance of a series of surveys that would authorize the surveys to proceed as described above. The surveys themselves would be developed on an ad-hoc basis over the three-year period, as pressing policy issues emerge. The resulting data will be used by ETA in carrying out its functions of issuing policy guidance, identifying needs for technical assistance among states and local areas, providing input to Congress on legislative revisions, and promoting continuous program improvement.

Type of Review: New.

Agency: Employment and Training Administration.

Agency Number: 1205–0NEW.

Title: Quick-Turnaround Surveys on WIA Implementation.

Affected Public: State and local workforce agencies.

Total Respondents: Varies by survey, from 54 to 250 respondents per survey, for up to 20 surveys.

Frequency: Up to 20 separate surveys over three years. Each survey will be administered only once.

Average Time per Response: Varies by survey, but estimated at 10 minutes for the shortest surveys (surveys with only 10 questions, asking about straightforward factual information or opinions) and up to 90 minutes for the longest surveys (surveys with a maximum of 30 questions).

Estimated Total Burden Hours: 3,768 hours.

Total Burden Cost for capital and startup: $0.

Total Burden Cost for operation and maintenance: $0.

Comments submitted in response to this comment request will be

summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 19, 2002.

Gerard F. Fiala,

Office Administrator, Office of Policy and Research.

[FR Doc. 02–16017 Filed 6–24–02; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–076)]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council (NAC), Minority Business Resource Advisory Committee.

DATES: Wednesday, July 31, 2002, 9 a.m. to 4 p.m., and Thursday, August 1, 2002, 9 a.m. to 12 Noon.

ADDRESSES: NASA Headquarters, 300 E. Street, SW., Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of Previous Meeting
—Office of Small and Disadvantaged Business Utilization Update of Activities
—NAC Meeting Report
—Overview of Agency-wide initiatives
—Update of Small Business Program
—Public Comment
—Panel Discussion and Review
—Committee Panel Reports
—Status of Open Committee Recommendations
—New Business

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 19, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–15902 Filed 6–24–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247]

Entergy Nuclear Operations, Inc., Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–26 issued to Entergy Nuclear Operations, Inc. for operation of the Indian Point Nuclear Generating Unit No. 2 located in Westchester County, New York.

The proposed amendment would revise Technical Specifications (TSs) Section 4.13.A, ''Inspection Requirements,'' to allow the use of the optimum eddy current probe size when performing steam generator tube inspections. The proposed amendment would also correct several grammatical errors.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The integrity of the steam generator tube portion of the reactor coolant pressure boundary will continue to be monitored, as before, therefore the probability of the failure of the pressure boundary is not affected by the proposed change. Likewise, the probability of the extent of any pressure boundary rupture will not be affected by the proposed changes since the depth and scope of the steam generator tube surveillances are not reduced by the proposed changes. The proposed changes facilitate the application of more advanced diagnostic techniques. The changes involve updating TS Section 4.13.A.3.f. to permit more flexibility in the eddy current inspection probes used in the steam generator tube inspections and to reflect current technological advances in inspection equipment, while still maintaining the minimum 610-mil diameter probe restriction. These changes do not affect possible initiating events for previously evaluated accidents or alter the configuration or operation of the facility. The Limiting Safety System Settings and Safety Limits specified in the current Technical [S]pecifications remain unchanged. Therefore, the proposed changes would not involve a significant increase in the probability or in the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is to allow improvements to the inspection techniques and equipment used to perform the steam generator tube inservice inspections. These inspections are only performed while the reactor is in the cold shutdown condition and the steam generators are not capable of affecting the operation of any system, structure or component that maintains the protection of a fission product barrier. The proposed changes facilitate the application of current diagnostic techniques. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected. Consequently no new failure modes are introduced as a result of the proposed change. Therefore, the proposed change does not create a new accident initiator or precursor, or create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

The integrity of the steam generator portion of the reactor coolant pressure boundary is not affected by the proposed changes to facilitate the application of current diagnostic techniques. Since the elimination of redundant and restrictive controls over the techniques and equipment used to inspect the steam generator tubes does not result in changes to the operation of the facility or the

physical design, the Updated Final Safety Analysis Report design basis, accident assumptions, or the Technical Specification Bases are not affected. Therefore, the integrity of the reactor coolant system pressure boundary is not affected and operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Regsiter** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 25, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final

[1] The most recent version of Title 10 of the code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.741(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: ''In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for 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.''

determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 13, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 19th day of June 2002.

Patrick D. Milano,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–15987 Filed 6–24–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306]

Nuclear Management Company, LLC; Notice of Consideration of Issuance of Amendments to Facilitate Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–42 and DPR–60, issued to the Nuclear Management Company, LLC (the licensee), for operation of the Prairie Island Nuclear Generating Plant, Units 1 and 2, located in Goodhue County, Minnesota.

The proposed amendments would be a full conversion from the current Technical Specifications (CTS) to a set of Improved Technical Specifications (ITS) based on NUREG–1431, ''Standard Technical Specifications (STS) for Westinghouse Plants,'' Revision 1, dated April 1995. The STS have been developed by the Commission's staff through working groups composed of both NRC staff members and industry representatives. The STS have been endorsed by the NRC staff as part of an industry-wide initiative to standardize and improve the Technical Specifications (TSs) for nuclear power plants. As part of the proposed amendments, the licensee has applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement),'' published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the CTS and, using NUREG–1431 as a basis, proposed ITS for Prairie Island, Units 1 and 2. The criteria in the Final Policy Statement were subsequently added to 10 CFR 50.36, ''Technical Specifications,'' in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953). The rule change became effective on August 18, 1995.

The licensee has categorized the proposed changes to the CTS into five general groupings. These groupings are characterized as administrative changes, more restrictive changes, less restrictive changes, less restrictive relocated details, and relocated specifications.

Administrative changes include those changes that are editorial in nature or involve the reorganization or reformatting of CTS requirements without affecting technical content or operational restrictions.

More restrictive changes include those changes that result in added restrictions or reduced flexibility. The licensee, in electing to implement the specifications of the STS, proposed a number of requirements more restrictive than those in the CTS. The ITS requirements in this category include requirements that are either new, more conservative than corresponding requirements in the CTS, or have additional restrictions that are not in the CTS but are in the STS.

Less restrictive changes include deletions and relaxations to portions of the CTS in order to conform to the guidance of NUREG–1431, which would result in reduced restrictions or added flexibility. When requirements have been shown to provide little or no safety benefit, their relaxation or removal from the TSs may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (1) generic NRC actions, (2) new staff positions that have evolved from technological advancements and operating experience, or (3) resolution of the Owner's Groups' comments on STS.

Less restrictive relocated details include those changes to the CTS that eliminate details and relocate the details to licensee-controlled documents. Typically, this involves details of system designs, system descriptions including design limits, descriptions of system or plant operation, procedural details for meeting TS requirements and

relocated reporting requirements, and redundant requirement references.

Relocated specifications include those changes to the CTS that relocate certain requirements which do not meet the 10 CFR 50.36 selection criteria. These requirements may be relocated to the Bases, Updated Safety Analysis Report, Core Operating Limits Report (COLR), Operational Quality Assurance Plan, plant procedures, or other licensee-controlled documents. Relocating requirements to licensee-controlled documents does not eliminate the requirements, but rather, places the requirements under more appropriate regulatory controls (*i.e.,* 10 CFR 50.54(a)(3), and 10 CFR 50.59) to manage their implementation and future changes.

In addition to the proposed changes solely involving the conversion, there are also changes proposed that are (1) different from the requirements in both the CTS and the STS and (2) in addition to those changes that are needed to meet the overall purpose of the conversion. These changes are referred to as beyond-scope changes and include:

1. Extension of the certain surveillance interval from 18 months to 24 months to support the proposed refueling cycle of 24 months;

2. Extension of the allowed outage time for the emergency core cooling system accumulators from 1 to 24 hours;

3. Missed surveillance consolidated line item improvement to extend the delay period for a missed surveillance requirement from the current limit of 24 hours to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater;'

4. Revision to the ventilation filter testing program to incorporate the guidance provided in NRC Generic Letter 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal,'' dated June 3, 1999;

5. A new methodology (to be incorporated by reference into ITS Section 5.0) that describes the method by which the shutdown margin limit during physics testing is established for inclusion within the COLR;

6. A new methodology (to be incorporated by reference to ITS Section 5.0) that describes the method by which a factor, F_Q^A , (in support of ITS 3.2.1, Heat Flux Channel Factor) is to be determined; and

7. Plant-specific instrument setpoint methodology in support of new instrument allowable values and trip setpoints in the ITS.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By July 25, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr.* If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

[1] ''The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.741(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: ''In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for 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.''

present evidence and cross-examine witnesses.

A request for a hearing and petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. Jay Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated December 11, 2000, as supplemented by letters dated March 6, June 5, July 3, August 13, August 29, October 15, November 12, and December 12, 2001, and January 25, January 31, February 14, February 15, February 16, March 6, April 11, May 10, May 30, and June 7, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 18th day of June, 2002.

For the Nuclear Regulatory Commission.

Tae Kim,

Senior Project Manager, Section I, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

South Carolina Electric & Gas Company, South Carolina Public Service Authority; Notice of Consideration of Issuance of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–12 issued to South Carolina Electric & Gas Company (the licensee) for operation of the Virgil C. Summer Nuclear Station, Unit No. 1 (VCSNS), located in Fairfield County, South Carolina.

The proposed amendment would increase the pool capacity by replacing all 11 existing rack modules with 12 new high density storage racks.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

South Carolina Electric & Gas Company (SCE&G) has evaluated the proposed changes to the VCSNS TS [Technical Specifications] described above against the Significant Hazards Criteria of 10 CFR 50.92 and has determined that the changes do not involve any significant hazard. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

In the analysis of the safety issues concerning the expanded pool storage capacity, the following previously postulated accident scenarios have been considered:

a. A spent fuel assembly drop in the Spent Fuel Pool
b. Loss of Spent Fuel Pool cooling flow
c. A seismic event
d. Misloaded fuel assembly

The probability that any of the accidents in the above list can occur is not significantly increased by the modification itself. The probabilities of a seismic event or loss of Spent Fuel Pool cooling flow are not influenced by the proposed changes. The probabilities of accidental fuel assembly drops or misloadings are primarily influenced by the methods used to lift and move these loads. The method of handling loads during normal plant operations is not significantly changed, since the same equipment (i.e., Spent Fuel Bridge Crane) and procedures will be used. Since the methods used to move loads during normal operations remain nearly the same as those used previously, there is no significant increase in the probability of an accident.

During rack removal and installation, all work in the pool area will be controlled and performed in strict accordance with specific written procedures. Any movement of fuel assemblies required to be performed to support the modification (e.g., removal and installation of racks) will be performed in the same manner as during normal fuel handling operations. Shipping cask movements will not be performed during the modification period.

Accordingly, the proposed modification does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of the previously postulated scenarios for an accidental drop of a fuel assembly in the Spent Fuel Pool have been re-evaluated for the proposed change. The results show that the postulated accident

of a fuel assembly striking the top of the storage racks will not distort the racks sufficiently to impair their functionality. The minimum subcriticality margin, K_{eff} less than or equal to 0.95, will be maintained. The structural damage to the Fuel Handling Building, pool liner, and fuel assembly resulting from a fuel assembly drop striking the pool floor or another assembly located within the racks is primarily dependent on the mass of the failing object and the drop height. Since these two parameters are not changed by the proposed modification, the postulated structural damage to these items remains unchanged. The radiological dose at the exclusion area boundary will increase due to the changes in in-core hold time and burnup. The previously calculated doses to thyroid and whole body were 10.6 and 0.52 rem, respectively. The new Exclusion Area Boundary (EAB) thyroid and whole body doses based on the proposed change will be 12.97 and 0.678 rem, respectively. These dose levels will remain ''well within'' the levels required by 10 CFR 100, paragraph 11, as defined in Section 15.7.4.11.1 of the Standard Review Plan. Therefore, the increase in dose is not considered a significant increase in consequence.

The consequences of the previously postulated scenarios for an accidental drop of a fuel assembly in the Reactor Building have also been re-evaluated for the proposed change to assess the affect of higher burnup and shorter cooling time. The proposed re-racking does not affect the fuel assembly mass or drop height parameters. Therefore, the previously determined fuel damage and resulting criticality assessments remain unchanged. However, the radiological dose at the exclusion area boundary will increase due to the changes in in-core hold time and burnup. The previously calculated doses to thyroid were 211 rem. With no action to limit the consequences of the fuel handling accident in the reactor building, the new EAB thyroid dose would be 259 rem. The whole-body would be the same as the doses for the accident in the fuel handling building, since those doses are caused by radionuclides that, in the Fuel-Handling-Building accident, were not affected by the charcoal filters in the building exhaust. This hypothetical thyroid dose would be higher than the criterion of the Standard Review Plan. However, as described in Section 15.4.5.1.4 of the VCSNS FSAR [Final Safety Analysis Report] instrumentation is available to detect the release of radioactivity and to close the Reactor Building Purge System. This action essentially precludes any radioactive release to the environment for this accident. Thus, the results of the postulated fuel drop accidents remain acceptable and do not represent a significant increase in consequences from any of the same previously evaluated accidents that have been reviewed and found acceptable by the NRC.

The consequences of a loss of Spent Fuel Pool cooling have been evaluated and found to have no increase. The concern with this accident is a reduction of Spent Fuel Pool water inventory from bulk pool boiling resulting in uncovering fuel assemblies. This situation could lead to fuel failure and subsequent significant increase in offsite dose. Loss of spent fuel pool cooling at V.C. Summer is mitigated in the usual manner by ensuring that a sufficient time lapse exists between the loss of forced cooling and uncovering fuel. This period of time is compared against a reasonable period to reestablish cooling or supply an alternative water source. Evaluation of this accident usually includes determination of the time to boil. This time period is much less than the onset of any significant increase in offsite dose, since once boiling begins it would have to continue unchecked until the pool surface was lowered to the point of exposing active fuel. The time to boil represents the onset of loss of pool water inventory and is commonly used as a gage for establishing the comparison of consequences before and after a reracking project. The heat up rate in the Spent Fuel Pool is a nearly linear function of the fuel decay heat load. The fuel decay heat load will increase subsequent to the proposed changes because of the increase in the number of assemblies, shorter hold times, and higher fuel burn-ups. The thermal-hydraulic analysis determined that the minimum time to boil is more than two hours subsequent to complete loss of forced cooling and a minimum of 24 hours between loss of forced cooling and a drop of water level to within 10 feet of the top of the racks. In the unlikely event that all pool cooling is lost, sufficient time will still be available subsequent to the proposed changes for the operators to provide alternate means of cooling before the water shielding above the top of the racks falls below 10 feet. Therefore, the proposed change represents no increase in the consequences of loss of pool cooling.

The consequences of a design basis seismic event are not increased. The consequences of this accident are evaluated on the basis of subsequent fuel damage or compromise of the fuel storage or building configurations leading to radiological or criticality concerns. The new racks have been analyzed in their new configuration and found safe during seismic motion. Fuel has been determined to remain intact and the storage racks maintain the fuel and fixed poison configurations subsequent to a seismic event. The structural capability of the pool and liner will not be exceeded under the appropriate combinations of dead weight, thermal, and seismic loads. The Fuel Handling Building structure will remain intact during a seismic event and will continue to adequately support and protect the fuel racks, storage array, and pool moderator/coolant. Thus, the consequences of a seismic event are not increased.

Fuel misloading accidents were previously postulated occurrences. The consequence of this type of accident has been analyzed for the worst possible storage configuration subsequent to the proposed modification and it has been shown that the consequences remain acceptable with respect to the same criteria used previously. Therefore, there is no increase in consequences.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

To assess the possibility of new or different kind of accidents, a list of the important parameters required to ensure safe fuel storage was established. Safe fuel storage is defined here as providing an environment which would not present any significant threats to workers or the general public. In other words, meeting the requirements of 10 CFR 100 and 10 CFR 20. Any new events, which would modify these parameters sufficiently to place them outside of the boundaries analyzed for normal conditions and/or outside of the boundaries previously considered for accidents, would be considered a new or different accident. The criticality and radiological safety evaluations were reviewed to establish the list of important parameters. The fuel configuration and the existence of the moderator/coolant were identified as the only two parameters important to safe fuel storage. Significant modification of these two parameters represents the only possibility of an unsafe storage condition. Once the two important parameters were established, an additional step was taken to determine what events (which were not previously considered) could result in changes to the storage configuration or moderator/coolant presence during or subsequent to the proposed changes. This process was adopted to ensure that the possibility of any new or different accident scenario or event would be identified.

Due to the proposed changes, an accidental drop of a rack module during construction activity in the pool was considered as the only event, which might represent a new or different kind of accident.

A construction accident of a rack dropping onto stored spent fuel or the pool floor liner is not a postulated event due to the defense-in-depth approach to be taken, as discussed in detail within Section 3.5 of the attached Licensing Report (Attachment V). A new temporary crane, hoist, and rack lifting rig will be introduced to remove the existing racks and install the new racks. These temporary lift items have been designed to meet the requirements of NUREG 0612 and ANSI N14.6. A rack drop event is commonly referred to as a ''heavy load drop'' over the pools. Racks will not be allowed to travel over any racks containing fuel assemblies, thus a rack drop onto fuel is precluded. A rack drop to the pool liner is not a postulated event, since all of the mechanical lifting components either provide redundancy in load path or are designed with safety margins greater than a factor of ten. All movements of heavy loads over the pool will comply with the applicable administrative controls and guidelines (i.e. plant procedures, NUREG 0612, etc.). Nevertheless, the analysis of a rack dropping to the liner has been performed and shown to be acceptable. A rack drop would not alter the storage configuration or moderator/coolant presence. Therefore, the rack drop does not represent a new or different kind of accident.

The proposed change does not alter the operating requirements of the plant or of the equipment credited in the mitigation of the design basis accidents. The proposed change does not affect any of the important parameters required to ensure safe fuel storage. Therefore, the potential for a new or previously unanalyzed accident is not created.

3. Does this change involve a significant reduction in margin of safety?

The function of the Spent Fuel Pool is to store the fuel assemblies in a subcritical and coolable configuration through all environmental and abnormal loadings, such as an earthquake or fuel assembly drop. The new rack design must meet all applicable requirements for safe storage and be functionally compatible with the Spent Fuel Pool.

SCE&G has addressed the safety issues related to the expanded pool storage capacity in the following areas:

1. Material, mechanical and structural considerations.

2. Nuclear criticality.

3. Thermal-hydraulic and pool cooling.

The mechanical, material, and structural designs of the new racks have been reviewed in accordance with the applicable provisions of the NRC Guidance entitled, ''OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications''. The rack materials used are compatible with the spent fuel assemblies and the Spent Fuel Pool environment. The design of the new racks preserves the proper margin of safety during abnormal loads such as a dropped assembly and tensile loads from a stuck assembly. It has been shown that such loads will not invalidate the mechanical design and material selection to safely store fuel in a coolable and subcritical configuration.

The methodology used in the criticality analysis of the expanded Spent Fuel Pool meets the appropriate NRC guidelines and the ANSI standards (GDC 62, NUREG 0800, Section 9.1.2, the OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications, Reg. Guide 1.13, and ANSI ANS 8.17). The margin of safety for subcriticality is maintained by having the neutron multiplication factor equal to, or less than, 0.95 under all normal storage, fuel handling, and accident conditions, including uncertainties.

An additional Technical Specification has been added to require a minimum of 500 ppm boron whenever new or irradiated fuel is being moved (non-refueling movement) in the spent fuel pool, fuel transfer canal, or cask loading pit. This minimum boron concentration will ensure that the fuel remains subcritical under any normal fuel handling or misloading/mispositioning accidents.

The criterion of having the neutron multiplication factor equal to, or less than, 0.95 during storage or fuel movement is the same as that used previously to establish criticality safety evaluation acceptance. Therefore, the accepted margin of safety remains the same.

The thermal-hydraulic and cooling evaluation of the pool demonstrated that the pool can be maintained below the specified thermal limits under the conditions of the maximum heat load and during all credible accident sequences and seismic events. The pool temperature will not exceed 170°F during the worst single failure of a cooling pump. The maximum local water temperature in the hot channel will remain below the boiling point. The fuel will not undergo any significant heat up after an accidental drop of a fuel assembly on top of the rack blocking the flow path. A loss of cooling to the pool will allow sufficient time (24 hours) for the operators to intervene and line up alternate cooling paths and the means of inventory make-up before the water shielding above the top of the racks falls below 10 feet. The thermal limits specified for the evaluations performed to support the proposed change are the same as those which were used in the previous evaluations. Therefore, the accepted margin of safety remains the same.

Thus, it is concluded that the changes do not involve a significant reduction in the margin of safety.

The NRC has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (51 FR 7751, March 6, 1986) of amendments that are considered not likely to involve a SHC [Significant Hazards Considerations]. The proposed changes for V.C. Summer are similar to Example (x): an expansion of the storage capacity of Spent Fuel Pool when all of the following are satisfied:

(1) The storage expansion method consists of either replacing existing racks with a design that allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits.

The V.C. Summer reracking modification involves replacement of the existing racks with a design that will allow closer spacing of the stored fuel assemblies. Also includes installing one new rack in the existing space in the NE corner of the spent fuel pool.

(2) The storage expansion method does not involve rod consolidation or double tiers.

The V.C. Summer reracking does not involve fuel consolidation. The racks will not be double tiered; no fuel assemblies will be stored above other assemblies.

(3) The K_{eff} of the pool is maintained less than, or equal to, 0.95.

The design of the new racks integrates a neutron absorber, Boral, within the racks to allow closer storage of spent fuel assemblies while ensuring that K_{eff} remains less than 0.95 under all conditions. Additionally, the water in the Spent Fuel Pool does contain boron as further assurance that K_{eff} remains less than 0.95.

(4) No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion.

The rack vendor has successfully participated in the licensing of numerous other racks of a similar design. The construction process and the analytical techniques of the V.C. Summer pool expansion are substantially the same as in the other completed rerack projects. Thus, no new or unproven technology is used in the V.C. Summer reracking.

Pursuant to 10 CFR 50.91, the preceding analyses provides a determination that the proposed Technical Specifications change poses no significant hazard as delineated by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 25, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for

Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, [1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to ''any matter which the Commission determines to be in controversy among the parties.''

The hybrid procedures in section 134 provide for oral argument on matters in

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.741(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: ''In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for 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.''

controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, ''Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors'' (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

For further details with respect to this action, see the application for amendment dated July 24, 2001, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 21st day of June 2002.

For the Nuclear Regulatory Commission.

Karen R. Cotton,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management.

[FR Doc. 02–16097 Filed 6–24–02; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from May 31, 2002, through June 13, 2002. The last biweekly notice was published on June 11, 2002 (67 FR 40019).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 25, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should

consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.741(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: ''In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for 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.''

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: May 15, 2002 (102–04701).

Description of amendments request: The amendments would revise Limiting Condition for Operation (LCO) 3.9.3, ''Containment Penetrations,'' of the Technical Specifications. The amendments would (1) modify LCO 3.9.3.b on one door in each air lock being closed and (2) add a note to LCO 3.9.3 about containment penetration flow paths providing direct access from the containment to the outside atmosphere may be unisolated under administrative controls. The amendments would allow the containment air lock and other penetrations to be open during core alterations or movement of irradiated fuel assemblies within containment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment[s] to Technical Specification (TS) 3.9.3[,] ''Containment Penetrations,'' would allow the personnel air locks and other containment penetrations to remain open during CORE ALTERATIONS or movement of irradiated fuel assemblies within containment. The position of the personnel air locks and other containment penetrations (open or closed) are not an initiator of any accident.

The fuel handling accident contained in the Updated Final Safety Analysis Report [for Palo Verde], Revision 11[,] assumes that the personnel air locks, containment penetrations, and the equipment hatch are open and the entire airborne radioactivity reaching the containment [from the damaged fuel] is released to the outside environment. Using these assumptions, the current analysis results in off site doses that are well within guideline values specified in 10 CFR [Part] 100[,] ''[R]eactor Site Criteria[,]'' and calculated control room doses within the acceptance criteria specified in General Design Criteria 19[,] ''Control Room.''

Therefore, the proposed amendment request to allow the personnel air locks and [other] containment penetrations to be open during CORE ALTERATIONS [or] movement of irradiated fuel assemblies in containment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment[s] to TS 3.9.3[,] ''Containment Penetrations,'' allowing the personnel air locks and other containment penetrations to be open during CORE ALTERATIONS [or] movement of irradiated fuel in containment does not involve a physical alteration of the plant (no new or different type of equipment will be installed). It does[,] however, involve a minor change in the methods governing normal plant operation during refueling. This minor change in personnel air lock and containment penetration control does not create the possibility of a new or different kind of accident. [Containment penetration control is not an initiator of an accident.] The fuel handling accident [(FHA)] analysis contained in the Updated Final Safety Analysis Report, Revision 11[,] already assumes that the personnel air locks, [other] containment penetrations, and the equipment hatch are open and the entire airborne radioactivity released in containment following a FHA is transported to the outside environment. This analysis results in off site doses that are well within guideline values specified in 10 CFR [Part] 100[,] ''Reactor Site Criteria[,]'' and calculated control room doses within the acceptance criteria specified in General Design Criteria 19[,] ''Control Room.''

Thus, the proposed amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed amendment[s] to TS 3.9.3[,] ''Containment Penetrations,'' allowing the personnel air locks and other containment penetrations to be open during CORE ALTERATIONS [or] movement of irradiated fuel in containment remains bounded by previously determined radiological dose consequences for a FHA inside containment. The previously analyzed dose consequences assumes that the personnel air locks, containment penetrations, and the equipment hatch are open and the entire airborne radioactivity released in containment is transported to the outside environment. The results of this analysis were determined to be within the limits of 10 CFR [Part] 100[,] ''Reactor Site Criteria[,]'' and [* * *] meets the acceptance criteria of NUREG–0800[, ''] Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants[,''] Section 15.7.4[,] ''Radiological Consequences of Fuel Handling Accidents.'' The calculated control room doses are within the acceptance criteria specified in General Design Criteria 19[,] ''Control Room.'' There are no changes in the assumptions made about the positions of the containment openings and penetrations. Therefore, there is no change in the analysis results and the proposed amendment request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: May 23, 2002.

Description of amendment request: The proposed amendment would delete Technical Specification (TS) 5.5.3, ''Post Accident Sampling System (PASS),'' and thereby eliminate the requirements to have and maintain the PASS at Fermi 2. The changes are based on NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–413, ''Elimination of Requirements for a Post Accident Sampling System (PASS).'' The NRC staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949), on possible amendments concerning TSTF–413, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the following NSHC determination in its application dated May 23, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the [Three Mile Island, Unit 2] TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in

aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS. Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Section Chief: L. Raghavan.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: May 23, 2002.

Description of amendment request: The proposed amendment would delete Section 2.F of the Operating License which requires reporting violations of the requirements in Section 2.C of the Operating License. The licensee stated that the requirements in Section 2.F are adequately addressed by the reporting requirements identified in 10 CFR 50.72 and 10 CFR 50.73, and therefore, Section 2.F is not required. The proposed amendment would also delete License Conditions 2.C.(19), 2.C.(20) and 2.C.(21), which pertain to historical actions that have been met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This License Amendment request involves administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed changes. The three License Conditions proposed for deletion pertain to actions that have been completed and are no longer applicable. The reporting requirements in Section 2.F of the Operating License are not required because they are either adequately addressed by 10 CFR 50.72 and 10 CFR 50.73, or contained in the specific License Condition (2.C.(10)). Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes have no impact on the design, function or operation of any plant structure, system or component. The changes are administrative in nature and do not affect plant equipment or accident analyses. License Conditions 2.C.(19), 2.C.(20) and 2.C.(21) can be deleted because they are no longer applicable. The reporting requirements in the Fermi 2 Operating License can be deleted because they are either adequately addressed in 10 CFR 50.72 and 10 CFR 50.73, or are included in the specific License Condition (2.C.(10)). Therefore, these changes cannot create a new failure mode, nor can they create the possibility of a new or different kind of accident than any accident previously evaluated.

3. The change does not involve a significant reduction in the margin of safety.

The proposed changes do not relax the bases for any limiting condition of operation nor do they affect the design or operation of any fission product barrier. The changes are administrative in nature and result in the deletion of obsolete License Conditions and reporting requirements that are adequately addressed elsewhere. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Section Chief: L. Raghavan, Section Chief.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: May 23, 2002.

Description of amendment request: The proposed amendment would change the Fermi 2 Technical Specifications (TSs) to allow a one-time deferral of the Type A primary containment integrated leak rate test. Specifically, TS 5.5.12, ''Primary Containment Leakage Rate Testing Program,'' would be revised to extend

the current interval for performing the containment Type A test to 15 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed License Amendment involves a one-time extension of the testing frequency for the primary containment 10 CFR [Part] 50, Appendix J, Type A test. The current 10-year test interval would be extended on a one-time basis to no longer than 15 years. The proposed Technical Specification (TS) change does not involve a physical plant change or a change in the manner in which the plant is operated or controlled. The primary containment is designed to provide an essentially leak tight barrier against an uncontrolled release of radioactivity to the environment resulting from postulated design basis accidents. As such, the primary containment and the testing requirements do not affect accident initiation; therefore, the proposed TS change does not involve a significant increase in the probability of an accident previously evaluated.

Type B and C containment local leak rate testing will continue to be performed at the frequency required by the TS. As documented in NUREG–1493, ''Performance-Based Containment Leakage Test Program,'' industry experience has shown that Type B and C tests have identified about 97 percent of containment leakage paths, and only about 3 percent have been detected by a Type A test. NUREG–1493 also concluded, in part, that reducing the frequency of Type A containment leakage rate test to once per 20 years would result in an imperceptible increase in risk. The Fermi 2 risk-based assessment of the proposed extension supports this conclusion. The design and construction of the primary containment, combined with the containment inspection program in accordance with the American Society of Mechanical Engineers (ASME) Code, Section XI, and the Maintenance Rule program per 10 CFR 50.65 requirements, provide a high degree of confidence that the containment will not degrade in a manner that is detectable only by Type A testing. Additionally, the inherent feature of Boiling Water Reactor containments which provides on-line containment monitoring capability, allows for early detection of gross containment leakage during power operation.

Based on the above, the proposed change does not significantly increase the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The primary containment is designed to contain energy and fission products during and following design basis accidents. The containment and testing requirements, invoked to periodically demonstrate the integrity of the containment, ensure the plant's ability to mitigate the consequences of an accident; however, the containment and testing do not involve accident initiation. In addition, the proposed change to the Type A test frequency does not involve a physical change to the facility. The change does not affect the operation of the plant such that a new failure mode involving the possibility of a new or different kind of accident is created. Therefore, the proposed change does not create the potential for a new or different kind of accident from any accident previously evaluated.

3. The [proposed] change does not involve a significant reduction in the margin of safety.

The NUREG–1493 generic study on the effects of extending containment leakage testing found that reducing the Type A test frequency to once per 20 years resulted in an imperceptible increase in risk to the public. The NUREG study concluded that Type B and C testing detect most potential containment leakage. The extension of [the] Type A test interval to 15 years has a minimal effect on leakage detection capability. The TS allowed leakage limit is not impacted by this change, and the frequency of local Type B and C testing will not be altered as a result of this extension. Additionally, the containment inspection program provides a high degree of assurance that the containment will not degrade in a manner only detectable by Type A testing. On-line containment monitoring provides additional assurance for detecting gross containment leakage during power operation. The combination of all these factors ensures that the safety margin will be maintained. Therefore, the proposed changes will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Section Chief: L. Raghavan.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: May 23, 2002.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TSs) to eliminate the response time testing requirements for certain instrumentations in TS 3.3.1.1 and TS 3.6.1.1, based on NRC-approved licensing topical report, NEDO–32291-A, ''System Analyses for Elimination of Selected Response Time Testing Requirements,'' dated October 1995, and its Supplement 1, dated October 1999. This licensing topical report shows that other periodic tests required by TSs, such as channel calibrations, channel checks, channel functional tests, and logic system functional tests, provide adequate assurance that instrument response times are within acceptance limits. Therefore, the proposed change to delete the specific response time testing requirements does not change the response time assumptions in the Updated Safety Analysis Report. Only the methodology of time response verification would be changed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment to the Technical Specifications does not result in the alteration of the design, material, or construction standards that were applicable prior to the change. The same Reactor Protection System (RPS) and Primary Containment Isolation Instrumentation instrumentation [sic] is used, and the response time assumptions in [the] Updated Final Safety Analysis Report (UFSAR) Chapter 15 analysis remain unchanged. Only the methodology of time response verification is changed. The proposed change will not result in the modification of any system interface that would increase the likelihood of an accident since these events are independent of the proposed change. The proposed amendment will not change, degrade, or prevent actions, or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the UFSAR. Therefore, the proposed amendment does not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not alter the performance of the Reactor Protection System (RPS) or Primary Containment Isolation Instrumentation systems. All RPS and Primary Containment Isolation Instrumentation channels will still have an initial response time verified by test before initially placing the channel in operational service and after any maintenance that could affect response time. Changing the method of periodically verifying instrument response for certain RPS and Primary Containment Isolation Instrumentation channels (assuring equipment operability) from time response testing to calibration and channel checks will

not create any new accident initiators or scenarios. Periodic surveillance of these instruments will detect significant degradation in the channel characteristic. Implementation of the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Implementation of NEDO 32291–A methodologies for eliminating selected response time testing does not involve a significant reduction in the margin of safety. The current response time limits are based on the maximum values assumed in the plant safety analyses. The analyses conservatively time testing does not affect the capability of the associated systems to establish the margin of safety. The elimination of the selected response perform their intended function within the allowed response time used as the basis for plant safety analyses. Plant and system response to an initiating event will remain in compliance within the assumptions of the safety analyses, and therefore, the margin of safety is not affected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Section Chief: L. Raghavan, Section Chief.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: May 23, 2002.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TSs) to revise the requirements for system operability during movement of recently irradiated fuel assemblies in the secondary containment. Specifically, the Applicability of TS 3.3.7.1, ''Control Room Emergency Filtration (CREF) System Instrumentation,'' 3.7.3, ''Control Room Emergency Filtration (CREF) System,'' and 3.7.4, ''Control Center Air Conditioning (AC) System,'' during movement of recently irradiated fuel assemblies would be deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This License Amendment involves changes in the requirements for the operability of the CREF system, CREF system instrumentation, and Control Center Air Conditioning (AC) system. The functions of these systems provide configurations for mitigating the consequences of radiological accidents; however, they do not involve the initiation of any previously analyzed accident. Therefore, the proposed changes cannot increase the probability of any previously evaluated accident.

The analysis of the Fuel Handling Accident (FHA) concludes that radiological consequences are within the regulatory acceptance criteria. The FHA analysis includes evaluations of the radiological consequences resulting from a limiting drop of a fuel assembly, using the Alternative Source Term (AST) and the Regulatory Guide 1.25 methodologies, over the reactor core. The radiological consequences associated with this scenario, assuming no mitigation credit for the CREF System, have been shown to satisfy the regulatory acceptance criteria. Therefore, the proposed changes do not significantly increase the radiological consequences of any previously evaluated accident.

Based on the above, the proposed changes do not significantly increase the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the design function or operation of the systems involved. The CREF system will still provide protection to control room occupants in the case of a significant radioactive release. The revised Technical Specification (TS) requirements are supported by the FHA analysis. The radiological consequences of a FHA under the proposed TS requirements are well below the regulatory limits. The proposed changes do not introduce any new modes of plant operation and do not involve physical modifications to the plant. The original Licensing Basis for the FHA took no credit for CREF system mitigation. Therefore, the proposed changes do not create the potential for a new or different kind of accident from any accident previously evaluated.

3. The change does not involve a significant reduction in the margin of safety.

The proposed changes to the Fermi 2 TS requirements are supported by the design basis analysis and are established such that the radiological consequences are below the regulatory guidelines. Safety margins and analytical conservatisms are retained to ensure that the analysis adequately bounds all postulated event scenarios. The proposed TS requirements continue to ensure that the radiological consequences at both the control room and the exclusion area and low population zone boundaries are below the corresponding regulatory guidelines; therefore, the proposed changes will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Section Chief: L. Raghavan, Section Chief.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: May 7, 2002.

Description of amendment request: The proposed amendment would change Technical Specifications (TSs) 2.2, ''Limiting Safety System Settings'' and 3/4.3, ''Instrumentation'' to more accurately reflect the existing plant design for the Reactor Protection System, the Engineered Safety Features Actuation System, and the Radiation Monitoring System instrumentation and to provide consistency within TS Tables 2.2–1, 3.3–1, and 4.3–1. Specifically, the proposed amendment would make the following changes:

(1) The Reactor Coolant Pump Speed—low functional unit, also known as the Underspeed—Reactor Coolant Pumps functional unit, which is not credited by the facility accident analysis, would be deleted from the TSs.

(2) The mode applicability for the Wide Range Logarithmic Neutron Flux Monitor functional unit would be revised consistent with a previously approved license amendment (Millstone Unit No. 2 License Amendment No. 38, dated April 19, 1978).

(3) The Safety Limits And Limiting Safety System Settings TS would be revised for completeness and consistency with the Reactor Protection System Instrumentation TS to include those functional units which do not have specific trip or allowable values.

(4) The Reactor Protection System Instrumentation TS would be revised to include operability requirements for the Reactor Protection System Logic functional unit.

(5) The Reactor Protection System Instrumentation TS would be revised to

include operability requirements for the Reactor Trip Breakers functional unit.

(6) The Engineered Safety Feature Actuation System Instrumentation TS would be revised to include operability, trip setpoint, and surveillance requirements for the Automatic Actuation Logic, as applicable, associated with the Safety Injection, Containment Spray, Containment Isolation, Main Steam Isolation, Enclosure Building Filtration, Containment Sump Recirculation, Loss of Power, and Auxiliary Feedwater functional units.

(7) The Engineered Safety Feature Actuation System Instrumentation TS action statement for the Auxiliary Feedwater manual actuation functional unit would be revised such that the required actions are consistent with the applicability of the TS.

(8) The Engineered Safety Feature Actuation System Instrumentation table, which identifies Engineered Safety Features Trip Values, would be revised for completeness and consistency to include those functional units which do not have specific trip or allowable values.

(9) The Radiation Monitoring Instrumentation TS would be revised to include a new surveillance requirement which would verify that the response time for the control room isolation function is consistent with facility accident analysis assumptions.

(10) The Noble Gas Effluent Monitor (high range) (Unit 2 stack) functional unit would be relocated within the applicable TS as a process monitor, consistent with its current (and original) design function.

(11) The Remote Shutdown Instrumentation TS would be revised consistent with standard practices for TS format such that the action statement would not be entered unless the minimum channels of remote shutdown instrumentation that are required to be operable, as defined by this specification, are not maintained.

(12) The Remote Shutdown Instrumentation TS would be revised by extending the restoration period for an inoperable channel of remote shutdown instrumentation from 7 days to 31 days.

The TS Bases would also be revised, as applicable, to reflect these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes would not alter the way any structure, system, or component functions and would not alter the manner in which the plant is operated. There are no hardware changes associated with the proposed changes. Therefore, the Reactor Protection System, the Engineered Safety Features Actuation System, and the Radiation Monitoring System instrumentation would continue to perform within the bounds of the previously performed accident analyses. The proposed changes to the operability requirements would not affect the instrumentation's ability to mitigate the design-basis accidents. The design-basis accidents would remain the same postulated events described in the Millstone Unit No. 2 Final Safety Analysis Report, and the consequences of these events will not be affected. Therefore, the proposed changes would not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes would not alter the plant configuration (no new or different type of equipment would be installed) or require any new or unusual operator actions. The proposed changes would not alter the way any structure, system, or component functions and would not alter the manner in which the plant is operated. The proposed changes would not introduce any new failure modes. Therefore, the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes would not reduce the margin of safety since the changes have no impact on any accident analysis assumption. The proposed changes would not decrease the scope of equipment currently required to be operable or subject to surveillance testing, nor would the proposed changes affect any instrument setpoints or equipment safety functions. The proposed changes would not alter the operation of any component or system, nor would the proposed changes affect any safety limits or safety system settings which are credited in a facility accident analysis. Therefore, the proposed changes would not result in a reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Clifford.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: April 18, 2002.

Description of amendment request: The proposed amendments would revise the Technical Specifications to increase the boron concentration in the spent fuel pool from 730 ppm to 850 ppm, reduce the Boraflex credit from 50 percent to 40 percent, and change the storage criteria, fuel enrichment, and burnup requirements for Region 2A of this spent fuel pool.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No, based upon the following:

Dropped Fuel Assembly

There is no significant increase in the probability of a fuel assembly drop accident in the spent fuel pools when considering the degradation of the Boraflex panels in the spent fuel pool racks coupled with the presence of soluble boron in the spent fuel pool water for criticality control. The handling of the fuel assemblies in the spent fuel pool has always been performed in borated water, and the quantity of Boraflex remaining in the racks has no effect on the probability of such a drop accident.

The criticality analysis showed that the consequences of a fuel assembly drop accident in the spent fuel pools are not affected when considering the degradation of the Boraflex in the spent fuel pool racks and the presence of soluble boron.

Fuel Misloading

There is no significant increase in the probability of the accidental misloading of spent fuel assemblies into the spent fuel pool racks when considering the degradation of the Boraflex in the spent fuel pool racks and the presence of soluble boron in the pool water for criticality control. Fuel assembly placement and storage will continue to be controlled pursuant to approved fuel handling procedures to ensure compliance with the Technical Specification requirements. These procedures will be revised as needed to comply with the revised Region 2A requirements which would be imposed by the proposed Technical

Specification changes. These revised storage limits were developed with input from station personnel. Their awareness, in conjunction with any procedure changes as described above, will provide additional assurance that an accidental misloading of a spent fuel assembly should not occur.

There is no increase in the consequences of the accidental misloading of spent fuel assemblies into the spent fuel pool racks because criticality analyses demonstrate that the pool will remain subcritical following an accidental misloading if the pool contains an adequate soluble boron concentration. Current Technical Specification 3.7.14 will ensure that an adequate spent fuel pool boron concentration is maintained in the McGuire spent fuel storage pools. The McGuire Station UFSAR Chapter 16, ''Selected Licensee Commitments,'' provides for adequate monitoring of the remaining Boraflex in the spent fuel pool racks. If that monitoring identifies further reductions in the Boraflex panels which would not support the conclusions of the McGuire Criticality Analysis, then the McGuire TSs and design bases would be revised as needed to ensure that acceptable subcriticality are maintained in the McGuire spent fuel storage pools.

Significant Change in Spent Fuel Pool Temperature

There is no significant increase in the probability of either the loss of normal cooling to the spent fuel pool water or a decrease in pool water temperature from a large emergency makeup when considering the degradation of the Boraflex in the spent fuel pool racks and the presence of soluble boron in the pool water for subcriticality control since a high concentration of soluble boron has always been maintained in the spent fuel pool water. Current Technical Specification 3.7.14 will ensure that an adequate spent fuel pool boron concentration is maintained in the McGuire spent fuel storage pools.

A loss of normal cooling to the spent fuel pool water causes an increase in the temperature of the water passing through the stored fuel assemblies. This causes a decrease in water density that would result in a decrease in reactivity when Boraflex neutron absorber panels are present in the racks. However, since a reduction in the amount of Boraflex present in the Region 2A racks is considered, and the spent fuel pool water has a high concentration of boron, a density decreases causes a positive reactivity addition. However, the additional negative reactivity provided by the current boron concentration limit, above that provided by the concentration required to maintain k_{eff} less than or equal to 0.95 (1470 ppm), will compensate for the increased reactivity which could result from a loss of spent fuel pool cooling event. Because adequate soluble boron will be maintained in the spent fuel pool water, the consequences of a loss of normal cooling to the spent fuel pool will not be increased. Current Technical Specification 3.7.14 will ensure that an adequate spent fuel pool boron concentration is maintained in the McGuire spent fuel storage pools.

A decrease in pool water temperature from a large emergency makeup causes an increase in water density that would result in an increase in reactivity when Boraflex neutron absorber panels are present in the racks. However, the additional negative reactivity provided by the current boron concentration limit, above that provided by the concentration required to maintain k_{eff} less than or equal to 0.95 (1470 ppm), will compensate for the increased reactivity which could result from a decrease in spent fuel pool water temperature. Because adequate soluble boron will be maintained in the spent fuel pool water, the consequences of a decrease in pool water temperature will not be increased. Current Technical Specification 3.7.14 will ensure that an adequate spent fuel pool boron concentration is maintained in the McGuire spent fuel storage pools.

2. Will the change create the possibility of a new or different kind of accident from any previously evaluated?

No. Criticality accidents in the spent fuel pool are not new or different types of accidents. They have been analyzed in Section 9.1.2.3 of the Updated Final Safety Analysis Report and in Criticality Analysis reports associated with specific licensing amendments for fuel enrichments up to 4.75 weight percent U–235. Specific accidents considered and evaluated include fuel assembly drop, accidental misloading of spent fuel assemblies into the spent fuel pool racks, and significant changes in spent fuel pool water temperature. The accident analysis in the Updated Final Safety Analysis Report remains bounding.

The possibility for creating a new or different kind of accident is not credible. The amendment proposes to take credit for the soluble boron in the spent fuel pool water for reactivity control in the spent fuel pool while maintaining the necessary margin of safety. Because soluble boron has always been present in the spent fuel pool, a dilution of the spent fuel pool soluble boron has always been a possibility; however, a criticality accident resulting from a dilution accident was not considered credible. A spent fuel pool dilution evaluation * * * has demonstrated that a dilution of the boron concentration in the spent fuel pool water which could increase the rack k_{eff} to greater than 0.95 (constituting a reduction of the required margin to criticality) is not a credible event. The requirement to maintain a revised minimum boron concentration in the spent fuel pool water for reactivity control (at least 850 ppm) will have no effect on normal pool operations and maintenance. There are no changes in equipment design or in plant configuration. This revised requirement will not result in the installation of any new equipment or modification of any existing equipment. Therefore, the proposed amendment will not result in the possibility of a new or different kind of accident.

3. Will the change involve a significant reduction in a margin of safety?

No. The proposed Technical Specification changes and the resulting McGuire Region 2A spent fuel storage operating limits will provide adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. Those revised limits are based on a plant specific criticality analysis * * * based on the ''Westinghouse Spent Fuel Rack Criticality Analysis Methodology'' * * * The Westinghouse methodology for taking credit for soluble boron in the spent fuel pool has been reviewed and approved by the NRC * * * This methodology takes partial credit for soluble boron in the spent fuel pool and requires conformance with the following NRC acceptance criteria for preventing criticality outside the reactor:

(1) k_{eff} shall be less than 1.0 if fully flooded with unborated water which includes an allowance for uncertainties at a 95% probability, 95% confidence (95/95) level; and

(2) k_{eff} shall be less than or equal to 0.95 if fully flooded with borated water, which includes an allowance for uncertainties at a 95/95 level.

The criticality analysis utilized credit for soluble boron to ensure k_{eff} will be less than or equal to 0.95 under normal circumstances, and storage configurations have been defined using a 95/95 k_{eff} calculation to ensure that the spent fuel rack k_{eff} will be less than 1.0 with no soluble boron. Soluble boron credit is used to provide safety margin by maintaining k_{eff} less than or equal to 0.95 including uncertainties, tolerances and accident conditions in the presence of spent fuel pool soluble boron. The loss of substantial amounts of soluble boron from the spent fuel pool which could lead to exceeding a k_{eff} of 0.95 has been evaluated * * * and shown to be not credible. Accordingly, the required margin to criticality is not reduced.

Previous evaluations * * * have shown that the dilution of the spent fuel pool boron concentration from the conservative assumed initial boron concentration (2475 ppm) to the minimum boron concentration required to maintain $k_{eff} \leq 0.95$ (850 ppm) is not credible. The dilution analyses, along with the 95/95 criticality calculation which shows that the spent fuel rack k_{eff} will remain less than 1.0 when flooded with unborated water, provide a level of safety comparable to the conservative criticality analysis methodology* * *

Therefore, the proposed changes in this license amendment will not result in a significant reduction in the facility's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: April 19, 2002.

Description of amendment request: The proposed change revises Technical

Specification (TS) 5.5.10, ''Technical Specification (TS) Bases Control Program,'' to provide consistency with changes to 10 CFR 50.59 as published in the **Federal Register** (64 FR 53582) on October 4, 1999, that became effective March 13, 2001. The proposed changes to TS 5.5.10 are made to incorporate the change made in 10 CFR 50.59 to remove the phrase ''unreviewed safety question.'' The proposed changes to TS 5.5.10 are consistent with NRC approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler TSTF–364, Revision 0, as amended by the Westinghouse Owners Group (WOG) editorial change WOG–ED–24.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deletes the reference to ''unreviewed safety question'' as defined in 10 CFR 50.59. Deletion of the definition of ''unreviewed safety question'' was approved by the NRC with the revision of 10 CFR 50.59. This change is administrative in nature. Consequently, the probability of an accident previously evaluated is not significantly increased. Changes to the TS Bases are still evaluated in accordance with 10 CFR 50.59. As a result, the probability or consequences of any accident previously evaluated are not significantly affected. There is no increase in the radiological dose at the site boundary for any previously evaluated accident. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. These changes are considered administrative in nature and do not modify, add, delete, or relocate any technical requirements in the TS. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes will not reduce a margin of safety because it has no direct effect on any safety analyses assumptions. Changes to the TS Bases that result in meeting the criteria in paragraph 10 CFR 50.59(c)(2) continue to require NRC approval pursuant to 10 CFR 50.59. This change is administrative in nature based on the revision to 10 CFR 50.59. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 14, 2002

Description of amendment request: The proposed changes will amend the Operating License to revise the as-found safety function lift setpoint tolerances for the Safety and Relief Valves (S/RVs) for River Bend Station, Unit 1. The proposed amendment does not change the actual setpoint or the way the S/RVs are operated, would be limited to the lower tolerances and would not affect the upper limits, and would only apply to the as-found tolerance and not to the as-left tolerance which will remain unchanged. The as-found tolerances are used for determining operability and to increase sample sizes for testing. There will be no change to the valves as installed in the plant. The proposed amendment would also allow surveillance of the relief mode of operation of the S/RVs without physically lifting the disk of a valve off the seat at power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

These changes have no influence on the probability or consequences of any accident. The setpoint tolerance change does not [a]ffect the operation of valves that are installed in the plant or change the as-left tolerance which will remain at ±1%. The setpoint tolerances for valves that have been tested or refurbished are not being changed. The change only has an [a]ffect on increased sampling for operability and for IST [in-service testing] purposes. The change to the tolerance only affects the lower limit for opening the valve and does not change the upper limit which is the limit that protects from overpressurization.

There is no increase in the probability or consequences of any accident based on the changes to the remote actuation testing of the valves because the valve opening capability will continue to be bench tested and the actuator will be tested independently. The open and close capabilities will therefore be demonstrated satisfactorily.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new or different accidents are created because the proposed changes do not change the configuration or operation of the plant in any way. The setpoint tolerance changes only affect the criteria that determines when a valve test is considered to be a failure and is limited to the lower limit. It does not change the criteria for the upper limit that protects against overpressurization.

The changes to the remote actuation testing continue to provide assurance that the valves have open and close capabilities and remain consistent with the intent of the present surveillance.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not change the configuration or operation of the plant in any way. The setpoint tolerance changes only affect the criteria that determines when a valve test is considered to be a failure and is limited to the lower limit. It does not change the criteria for the upper limit that protects against overpressurization.

The changes to the remote actuation testing continue to provide assurance that the valve has open and close capability and is consistent with the intent of the present surveillance.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 14, 2002.

Description of amendment request: Entergy Operations, Inc. (Entergy) requests changes to the Degraded Voltage—Voltage basis and loss-of-coolant accident (LOCA) time delay allowable values (Technical Specification Table 3.3.8.1–1, Items 1.c and 1.e; and Items 2.c and 2.e) to reflect the results of new calculations performed in association with a design basis reconstitution.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The change in the degraded voltage protection voltage and time delay allowable values allows the protection scheme to function as originally designed. The proposed allowable values ensure that the Class 1E distribution system remains connected to the offsite power system when adequate offsite voltage is available and motor starting transients are considered. Replacement of the Division 1 and 2 degraded voltage relays provide operational flexibility to accommodate the proposed protection voltage allowable values, which are more conservative than the current limits. Calculations have demonstrated that adequate margin is present to support the decrease in the minimum allowable Division 3 degraded voltage. The small increase in the time delay allowable values more accurately reflects the actual load sequencing experienced during an accident condition. The proposed time delay continues to provide equipment protection while preventing a premature separation from offsite power. The diesel start due to a Loss of Coolant Accident signal is not impacted by this change. During an actual degraded voltage condition, the degraded voltage time delays will continue to isolate the Class 1E distribution system from offsite power before the diesel is ready to assume the emergency loads, which is the limiting time basis for mitigating system responses to the accident. For this reason, the existing Loss of Power / Loss of Coolant accident analysis continues to be valid.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change involves the revision of degraded voltage protection voltage and time delay allowable values to satisfy existing design requirements. Component replacement necessary to support these new values will be performed in accordance with plant procedures, which ensure adherence with all quality requirements. No additional failure mechanisms are introduced as a result of the changes to the allowable values.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed protection voltage allowable values are low enough to prevent inadvertent power supply transfer, but high enough to ensure that sufficient voltage is available to the required equipment. The small increase in the time delay allowable values more accurately reflects the actual load sequencing experienced during an accident condition. The proposed time delay continues to provide equipment protection while preventing a premature separation from offsite power. The diesel start due to a Loss of Coolant Accident signal is not impacted by this change. During an actual degraded voltage condition, the degraded voltage time delays will continue to isolate the Class 1E distribution system from offsite power before the diesel is ready to assume the emergency loads.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 14, 2002.

Description of amendment request: Entergy Operations, Inc. is proposing to revise the River Bend Station, Unit 1 (RBS), Administrative Technical Specifications (TSs) regarding containment leak rate testing. The proposed change will revise RBS Administrative TS 5.5.13 to add an exception to the commitment to follow the guidelines for Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program.'' The exception is taken to the interval guidance in NEI 94–01, Revision 0, ''Industry Guideline for Implementing Performance-Base Option of 10CFR50, Appendix J.'' The effect of this request will be a one-time extension of the interval between tests from 10 years to 15 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

10CFR50, Appendix J was amended to incorporate provisions for performance-based testing in 1995. The proposed amendment to Technical Specification (TS) 5.5.13 adds a one-time extension to the current interval for Type A testing (i.e., the integrated leak rate test). The current interval of ten years, based on past performance, would be extended on a one-time basis to 15-years from the date of the last test. The proposed extension to the Type A test cannot increase the probability of an accident since there are no design or operating changes involved and the test is not an accident initiator. The proposed extension of the test interval does not involve a significant increase in the consequences since research documented in NUREG–1493, ''Performance Based Containment Leak Rate Test Program,'' has found that, generally, fewer than 3% of the potential containment leak paths are not identified by Type B and C testing. A risk evaluation of the interval extension for RBS is consistent with these results. In addition, at RBS, the testing and containment inspections also provide a high degree of assurance that the containment will not degrade in a manner detectable only by a Type A test. Inspections required by the Maintenance Rule (10CFR50.65) and by the American Society of Mechanical Engineers Boiler and Pressure Vessel Code are performed to identify containment degradation that could affect leaktightness.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new different kind of accident from any accident previously evaluated?

Response: No.

The proposed extension to the interval for the Type A test does not involve any design or operational changes that could lead to a new or different kind of accident from any accidents previously evaluated. The test itself is not being modified, but is only intended to be performed after a longer interval. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore, the proposed change does not create the possibility of a new or different

kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The generic study of the increase in the Type A test interval, NUREG–1493, concluded there is an imperceptible increase in the plant risk associated with extending the test interval out to twenty years. Further, the extended test interval would have a minimal effect on this risk since Type B and C testing detect 97% of potential leakage paths. For the requested change in the RBS ILRT (integrated leak rate testing) interval, it was determined that the risk contribution of leakage will increase 0.32%. This change is considered very small and does not represent a significant reduction in the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 14, 2002.

Description of amendment request: The proposed modification of the River Bend Station Technical Specifications is to revise several of the Surveillance Requirements (SRs) pertaining to testing of the Division 3 standby diesel generator (DG) and manual transfer test for offsite circuits. The proposed change would modify specific restrictions associated with these SRs that prohibit performing required testing in Modes 1, 2, or 3. The affected SRs are SR 3.8.1.8, SR 3.8.1.9, SR 3.8.1.10, SR 3.8.1.11, SR 3.8.1.12, SR 3.8.1.13, SR 3.8.1.16, SR 3.8.1.17, SR 3.8.1.18, and SR 3.8.1.19.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The DG and its associated emergency loads are accident mitigating features, not accident initiating equipment. Therefore, there will be no impact on any accident probabilities by the approval of the requested amendment.

The design of plant equipment is not being modified by these proposed changes. As such, the ability of the DG to respond to a design basis accident will not be adversely impacted by these proposed changes. The capability of the DG to supply power in a timely manner will not be compromised by permitting performance of DG testing during periods of power operation. Additionally, limiting testing to only one DG at a time ensures that design basis requirements for backup power is met, should a fault occur on the tested DG. Therefore, there would be no significant impact on any accident consequences.

Based on the above, the proposed change to permit certain DG surveillance tests to be performed during plant operation will have no [a]ffect on accident probabilities or consequences. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident causal mechanisms would be created as a result of NRC [Nuclear Regulatory Commission] approval of this amendment request since no changes are being made to the plant that would introduce any new accident causal mechanisms. Equipment will be operated in the same configuration with the exception of the plant mode in which the testing is conducted. This amendment request does not impact any plant systems that are accident initiators; neither does it adversely impact any accident mitigating systems.

Based on the above, implementation of the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed changes to the testing requirements for the DG do not affect the operability requirements for the DG, as verification of such operability will continue to be performed as required. Continued verification of operability supports the capability of the DG to perform its required function of providing emergency power to plant equipment that supports or constitutes the fission product barriers. Consequently, the performance of these fission product barriers will not be impacted by implementation of this proposed amendment.

In addition, the proposed changes involve no changes to setpoints or limits established or assumed by the accident analysis. On this and the above basis, no safety margins will be impacted.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: May 30, 2002.

Description of amendment request: The proposed amendment would revise the requirements in several administrative programs in Technical Specification (TS) Section 6.0, ''Administrative Controls.'' Specifically, the proposed amendment would: (1) Replace the specific management titles for several organizational positions with generic titles, (2) replace the title of the Quality Assurance Program Description with a reference to the quality assurance program described or referenced in the Updated Final Safety Analysis Report (UFSAR), and (3) delete the functions of the Station Nuclear Safety and the Nuclear Facilities Safety Committees and the Vice President-Nuclear Power since their duties and responsibilities are described in the Quality Assurance Program Description. The proposed changes reflect the organizational integration at the Indian Point Energy Center.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?

The proposed change eliminates the redundant controls on elements of the managerial and administrative controls implemented by the quality assurance program described or referenced in the UFSAR. There are no changes proposed to the design, operation, maintenance or testing

of the plant's systems, structures or components. Therefore, the assumptions of the operability or performance of systems, structures, or components in accident analyses are unchanged.

The adequacy of the managerial and administrative controls used to assure safe operation were previously accepted by the NRC [Nuclear Regulatory Commission] in their approval of the quality assurance program description. The changes to the existing controls were evaluated under 10 CFR 50.54 to ensure the changes would not reduce the commitments in the quality assurance program description previously accepted by the NRC. Therefore, there is no increase in the probability or in the consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not affect the design, operation, maintenance, or testing of a plant system, structure or component. No new or unanalyzed conditions can be created through the proposed replacement of specific administrative position titles with generic position titles, since the authority, responsibility and qualification for each required position are specified in the quality assurance program described or referenced in the UFSAR.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed changes do not affect a design function or operation of any plant structure, system, or component. The change does not affect the method of ENO's [Entergy Nuclear Operations'] compliance with any regulation. The changes to the quality assurance program as described or referenced in the UFSAR were evaluated under 10 CFR 50.54 and it was determined that the changes do not reduce any commitments from the quality assurance program description that was previously evaluated and accepted by the NRC.

Therefore, the proposed changes do not result in a change to any of the safety analyses or any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: March 19, 2002.

Description of amendment request: The proposed amendment would revise the method of controlling the fuel cycle unfavorable exposure time (UET) related to an anticipated transient without scram (ATWS) event. The current methodology controls UET by limiting the value of the moderator temperature coefficient (MTC) inherent in the reactor core design. The proposed license amendment would utilize the Configuration Risk Management Program to administratively control the availability of ATWS risk significant equipment to minimize core UET. By removing the UET MTC constraint, reload cores may be designed with a more positive MTC as allowed by the TS, therefore resulting in significant benefits including reduced fuel cost, reduced outage time, and reduced amount of spent fuel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration.

The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change in the methodology of controlling the UET associated with an ATWS event will not increase the probability of any accident previously evaluated, including an ATWS event. All systems, including the existing ATWS Mitigating Systems Actuation Circuitry (AMSAC), will continue to be operated in accordance with current design requirements, and no new components or system interactions have been identified that could lead to an increase in the probability of any accident previously evaluated in the UFSAR.

Currently, the UET for a given fuel cycle must be less than 5% of the operating cycle under a ''base case'' set of plant conditions (i.e., 100% power-operated relief valve (PORV) capacity, 100% AFW system availability, no control rod insertion capability, and AMSAC available). The proposed license amendment would replace the 5% fuel cycle limit on UET with the requirement to administratively control ATWS risk significant equipment when core conditions are ''unfavorable'' over the entire operating cycle. The goal of the administrative control program is to minimize the UET at all times. The methodology used to determine the UET will remain the same as the currently approved methodology. The Configuration Risk Management Program (CRMP), currently described in the Byron Station and Braidwood Station Technical Requirements Manual (TRM), Appendix T, will be used to manage the availability of ATWS risk significant equipment. The CRMP will provide a proceduralized process to perform a configuration risk assessment of the plant equipment configuration and availability prior to planned on-line maintenance of the ATWS risk significant equipment and/or functions. The CRMP is currently used as a tool to manage maintenance activities to minimize any increase in the consequences of an abnormal event or accident. Development of the Byron Station and Braidwood Station CRMP is consistent with 10 CFR 50.65, ''Requirements for monitoring the effectiveness of maintenance at nuclear power plants,'' paragraph (a)(4), and is governed by Work Control Procedure, WC–AA–101, ''On-Line Work Control Process.''

The ATWS risk significant equipment which will be monitored by the CRMP includes the:

- Rod control system;
- AFW system;
- Pressurizer PORVs; and
- ATWS Mitigating Systems Actuation Circuitry (AMSAC)

This change in methodology will also have no effect on the consequences of any accident previously evaluated including an ATWS event. Should an ATWS occur during an ''unfavorable'' fuel cycle period, the consequences of this event will remain unchanged under the new methodology which only administratively controls plant equipment availability associated with the UET. Also, the consequences of an ATWS event with the core designed with a more positive MTC remain acceptable. Although the time to RCS [reactor coolant system] overpressure and resultant loss-of-coolant accident (LOCA) may decrease, the consequences of the LOCA remain unchanged.

Based on this evaluation, it is concluded that the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The configuration, operation and accident response of the Byron Station and the Braidwood Station systems, structures or components are unchanged by the proposed TS change which would utilize an alternate method of controlling the UET of a fuel cycle. No transient event would result in a new sequence of events that could lead to a new accident scenario.

No new operating mode, safety-related equipment lineup, accident scenario, or equipment failure mode was identified as a result of utilizing the CRMP to monitor ATWS risk significant equipment. In addition, this methodology does not create any new failure modes that could lead to a different kind of accident. Software changes to the existing CRMP will be made to monitor the above mentioned ATWS risk significant equipment.

Based on this analysis, it is concluded that no new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed change. The proposed TS change does not have an adverse effect on any safety-related system. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not involve a significant reduction in a margin of safety.

The newly proposed methodology of monitoring and controlling the UET during an operating cycle is more conservative than the currently approved method and; therefore, will increase the margin of safety.

Currently, the UET for a given fuel cycle is limited to less than 5% of the operating cycle and is only evaluated for a ''base case'' set of plant conditions (i.e., 100% PORV capacity, 100% AFW system availability, no control rod insertion capability, and AMSAC available). The UET is currently limited by constraining the value of the MTC inherent in the reload reactor core design.

The proposed methodology will utilize the CRMP as a tool to monitor the availability of ATWS risk significant equipment during the entire operating cycle. By effectively managing the planned on-line maintenance of ATWS risk significant equipment, the cycle UET will be minimized at all times. This methodology also analyzes different combinations of ATWS risk significant equipment availability in addition to the ''base case'' conditions. The proposed license amendment would replace the 5% fuel cycle limit on UET with the requirement to administratively control ATWS risk significant equipment when core conditions are ''unfavorable'' over the entire operating cycle. The goal of the administrative program is to minimize the UET at all times. The methodology used to determine the UET will remain the same as the currently approved methodology. The Configuration Risk Management Program (CRMP) currently described in the Byron Station and Braidwood Station Technical Requirements Manual (TRM), Appendix T, will be used to manage the availability of ATWS risk significant equipment. The CRMP will provide a proceduralized process to perform a configuration risk assessment of the plant equipment configuration and availability prior to planned on-line maintenance of the ATWS risk significant equipment and/or functions. The CRMP is currently used as a tool to manage maintenance activities to minimize any increase in the consequences of an abnormal event or accident. Development of the Byron Station and Braidwood Station CRMP is consistent with 10 CFR 50.65, ''Requirements for monitoring the effectiveness of maintenance at nuclear power plants,'' paragraph (a)(4), and is governed by Work Control Procedure, WC–AA–101, ''On-Line Work Control Process.''

Based on this evaluation, the proposed TS changes do not involve a significant reduction in a margin of safety.

Based upon the above analyses and evaluations, we have concluded that the proposed change to the TS involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 (CR–3) Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: June 5, 2002.

Description of amendment request: The amendment would revise the Improved Technical Specifications to increase the maximum allowed rated thermal power for Crystal River Unit 3 from 2544 MegaWatts-thermal (MWt) to 2568 MWt.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does not involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change will increase the maximum core power level from 2544 MWt to 2568 MWt. This increase will only require adjustments and calibrations of existing plant instrumentation and control systems. No hardware upgrades or equipment replacements are needed to implement the proposed change.

Nuclear steam supply systems (NSSS) and balance-of-plant (BOP) systems and components that could be affected by the proposed change have been evaluated using revised NSSS design parameters based on a core power level of 2568 MWt. The results of these evaluations, which used well-defined analysis input assumptions/parameter values and currently approved analytical techniques, indicate that CR–3 systems and components will continue to function within their design parameters and remain capable of performing their required safety functions at 2568 MWt. Since the revised NSSS parameters remain within the design conditions of the reactor coolant system (RCS) functional specification, the proposed change will not result in any new design transients or adversely affect the current CR–3 design transient analyses.

The accidents analyzed in Chapter 14 of the CR–3 Final Safety Analysis Report (FSAR) have been reviewed for the impact of the uprate. Based on the power levels assumed in the current safety analyses, it has been determined that all FSAR and supporting analyses bound the uprate. This includes the dose calculations for the design basis radiological accidents, which assume a power level of 2619 MWt (2568 MWt plus an assumed 2 percent measurement uncertainty).

Based on the above, the change will not increase the probability or consequences of an accident previously evaluated.

(2) Does not create the possibility of a new or different kind of accident from any accident previously analyzed.

As discussed above, no hardware upgrades or equipment replacements are required to implement the proposed change. All CR–3 systems and components will continue to function within their design parameters and remain capable of performing their required safety functions. The proposed change does not impact current CR–3 design transients or introduce any new transients. The design, physical configuration and operation of the plant will not be changed; as a result, no new equipment failure modes will be introduced. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does not involve a significant reduction in the margin of safety.

Challenges to the fuel, reactor coolant system (RCS) pressure boundary and containment were evaluated for uprate conditions. Core analyses show that the implementation of the power uprate will continue to meet the current nuclear design basis. Impacts to components associated with RCS pressure boundary structural integrity, and factors such as pressure/temperature limits, vessel fluence, and pressurized thermal shock (PTS) were determined to be bounded by current analyses. Mass and energy release to the containment from a loss-of-coolant accident (LOCA) or main steam line break are also bounded by current analyses, which assume an initial power level of 2619 MWt.

As discussed above, all systems will continue to operate within their design parameters and remain capable of performing their intended safety functions following implementation of the proposed change. Finally, the current CR–3 safety analyses, including the design basis radiological accident dose calculations, bound the uprate.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, Associate General Counsel (MAC–BT15A), Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Acting Section Chief: Kahtan N. Jabbour.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: May 22, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification 6.9.1.11.b to add two NRC-approved topical reports to the Core Operating Limits Report (COLR) methodology list, and delete superseded reports. Also, the method of listing topical reports would be revised to be consistent with Technical Specifications Task Force (TSTF) 363, which has been approved by the NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment updates the list of COLR methodologies and would allow the use of two new NRC approved methodologies, EMF–2310(P)(A), ''SRP [Standard Review Plan] Chapter 15 Non-LOCA [Loss-of-Coolant Accident] Methodology for Pressurized Water Reactors [(PWR)],'' and EMF–2328 (P)(A), ''PWR Small Break LOCA Evaluation Model, S–RELAP5 Based,'' for the St. Lucie Unit 1 safety analyses. The proposed changes have no adverse impact on the operation of the plant and have no relevance to the accident initiators. There are no changes to the plant configuration, and thus the frequency of occurrence of previously analyzed accidents is not affected by the proposed changes.

With the updated methodologies, the safety analysis would continue to meet the analysis acceptance criteria consistent with the design basis requirements. The proposed changes have no adverse effect on the safety analysis and thus would not involve a significant increase in the consequences of design basis accidents. Changes to the COLR limits would continue to be controlled per Generic Letter 88–16 under the provisions of 10 CFR 50.59 and the requirements of TS 6.9.1.11.c.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendment updates the list of approved methodologies in TS 6.9.1.11.b. These changes would not create the possibility of a new kind of accident since there is no change to the plant configuration, systems or components, which would create new failure modes. The modes of operation of the plant remain unchanged.

Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes have no adverse impact on the safety analysis. The changes proposed would continue to provide margin to the acceptance criteria for Specified Acceptable Fuel Design Limits (SAFDL), 10 CFR 50.46(b) requirements, primary and secondary overpressurization, peak containment pressure, potential radioactive releases, and existing limiting conditions for operation. The future use of updated approved methodologies would follow all design basis requirements to ensure that a safety margin to the acceptance criteria would continue to remain available at all power levels for operation of St. Lucie Unit 1.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Kahtan N. Jabbour, Acting.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: May 23, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) associated with refueling operations to remove the requirement for operability of certain systems (containment penetrations, spent fuel pool and shield building ventilation, and containment isolation) when handling fuel assemblies that have decayed a sufficient period of time such that dose consequences of the postulated fuel handling accident (FHA) remain below the limits of 10 CFR Part 100 and the NRC Standard Review Plan with these systems unavailable. The proposed changes are consistent with the Standard TS for Combustion Engineering plants and a portion of Nuclear Energy Institute TS Task Force change traveler TSTF–51, Revision 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the St. Lucie Units 1 and 2 TSs incorporate line item improvements that are based on assumptions in the postulated fuel handling accident analyses. These proposed changes remove the applicability of TSs regarding operability of certain systems (containment penetrations, spent fuel pool and shield building ventilation, and containment isolation) when handling fuel assemblies that have decayed a sufficient period of time. The results of the FHA analyses demonstrate that sufficient radioactive decay has occurred after 72 hours such that the resulting dose consequences are well within the limits given in 10 CFR 100 and within the limits given in the Standard Review Plan, NUREG–0800. The systems that have been included in these proposed changes will have administrative controls in place to assure that systems are available and can be promptly returned to operation to further reduce dose consequences. These administrative controls will include a single normal or contingency method to promptly close the primary or secondary containment penetrations. These prompt methods need not completely block the penetrations nor be capable of resisting pressure, but are to enable the ventilation systems to draw the release from the postulated FHA such that it can be treated and monitored. This will result in lower doses than those calculated for the FHA.

The equipment or systems involved are not initiators of an accident. Operability of these systems or equipment during fuel movement and/or core alterations has no affect on the probability of any accident previously evaluated.

The proposed changes do not significantly increase the consequences of a fuel handling accident as previously evaluated. The calculated doses are well within the limits given in 10 CFR Part 100 and within the limits given in the Standard Review Plan, NUREG–0800. In addition, the calculated doses are larger than the expected doses because the calculations do not credit any filtration or containment of the source term that will occur by the administrative controls that will be in place.

The changes being proposed do not affect assumptions contained in other plant safety analyses or the physical design of the plant, nor do they affect other TSs that preserve safety analysis assumptions. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the TSs do not affect or create a different type of fuel handling accident. The fuel handling accident analyses assume that all of the iodine and noble gases that become airborne, escape, and reach the exclusion area boundary and low population zone with no credit taken for filtration, containment of the source term, or for decay or deposition. The proposed changes do not involve the addition or modification of equipment nor do they alter the design of plant systems. The revised operations are consistent with the fuel handling accident analyses. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The calculated doses are well within the limits given in 10 CFR Part 100 and within the limits given in the Standard Review Plan, NUREG–0800. The proposed changes do not alter the bases for assurance that safety-related activities are performed correctly or the basis for any TS that is related to the establishment of or maintenance of a safety margin.

The systems that have been included in the proposed change will have administrative controls in place to assure that the systems are available and can be promptly returned to operation to further reduce dose consequences. These administrative controls will include a single normal or contingency method to promptly close the primary or secondary containment penetrations. These prompt methods need not completely block the penetrations nor be capable of resisting pressure, but are to enable the ventilation systems to draw the release from the postulated FHA such that it can be treated and monitored.

Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Kahtan N. Jabbour, Acting.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 30, 2001.

Description of amendment request: Proposed amendment revises the Cooper Nuclear Station licensing basis with respect to containment overpressure contribution to emergency core cooling system pump net positive suction head.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below. The requested amendment:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested license amendment does not result in any new accident initiators, nor are there changes being proposed to other plant systems or equipment postulated to initiate an accident previously evaluated. Thus, the proposed change does not involve a significant increase in the probability of an accident previously evaluated in the USAR [Updated Safety Analysis Report].

The containment overpressure evaluation conservatively demonstrates that adequate margin between the available containment overpressure and the overpressure required to assure adequate low pressure ECCS [emergency core cooling system] pump NPSH [net positive suction head] are such that ECCS pump operation, as credited in the CNS [Cooper Nuclear Station] accident analysis, remains unchanged. Thus, the ECCS pumps continue to be available to perform the safety functions previously evaluated, and the proposed change does not involve a significant increase in the consequences of an accident previously evaluated in the USAR.

2. Does not create the possibility for a new or different kind of accident from any accident previously evaluated.

The proposed license amendment does not introduce any new equipment or hardware changes. The only equipment affected by this license amendment are the low pressure ECCS pumps. These pumps retain their ability to function following any accident previously evaluated and no new accidents are created as a result of increased reliance on overpressure or methodology changes. Thus, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated in the USAR.

3. Does not create a significant reduction in the margin of safety.

Although there is an increased reliance on containment overpressure, adequate low pressure ECCS pump NPSH is assured, and sufficient margin is conservatively determined to be maintained between the available overpressure and the required overpressure to provide confidence that the ECCS pumps will operate as required. The calculations are revised to show an increased absolute containment overpressure consideration from ~5 psi (original license application) to ~9.5 psi at the time of the peak suppression pool temperatures following a design basis LOCA [loss-of-coolant accident]. At this containment overpressure, the CS [core spray] and RHR [residual heat removal] pumps will utilize only ~4.45 psi and ~6.47 psi, respectively, of the available overpressure. This provides a margin of ~5 psi and ~3 psi, respectively, for the CS and RHR pumps at the peak suppression pool temperature. The calculations also address both short-term and long-term reliance on containment overpressure.

In the short-term (<600 seconds), the RHR pumps do not depend on containment overpressure for adequate NPSH. However, during this short-term period following initiation of the event, the CS pump is conservatively calculated to require as much as ~4.94 psi of containment overpressure to assure adequate NPSH. At the time this overpressure is needed, ~6.85 psi of containment overpressure is available, providing a margin of ~1.9 psi. For the time periods following the peak suppression pool temperature, the required overpressure reliance reduces with time and suppression pool temperature.

During the accident, beyond the time period of the peak suppression pool temperature, a minimum margin of ~0.6 psi is provided for ECCS pump NPSH. However, this minimum margin occurs just prior to 100 hours into the event at a point when no containment overpressure is required for ECCS pump NPSH. During times when containment overpressure is credited, there is a minimum of ~1 psi containment overpressure available.

The analysis also utilizes three new methods for evaluation of the previously evaluated accidents. These are the SHEX code for the containment pressure and temperature response analysis, the ANS 5.1–1979 model for determination of core decay heat, and the use of spatial evaluation of the suppression pool safety relief valve discharge quenchers relative to the ECCS pump intake strainers for prevention of steam bubble ingestion. A benchmark evaluation of the SHEX code is provided which indicates that the results are comparable to previous analysis. The ANS 5.1–1979 model is less conservative than the previously used May-Witt model. However, this change in conservatism is offset by the use of other input parameter changes such as reduced RHR heat exchanger heat removal assumptions and increased service water and suppression pool temperature assumptions. Additionally, both the SHEX code and the ANS 5.1 decay heat model have been previously accepted by NRC as sufficiently conservative analysis methods. The spatial evaluation of the suppression pool safety relief valve discharge quenchers relative to the ECCS pump intake strainers shows steam bubble ingestion is not predicted. This supports the elimination of a local suppression pool temperature limit.

Therefore, sufficient margin and adequate NPSH are demonstrated with the conservatism of a two sigma (two standard

deviations) uncertainty in the decay heat model, increased suction strainer debris loading, decreased RHR heat exchanger minimum performance criteria, and increases in SW [service water] and suppression pool temperatures. Thus, the proposed activity does no involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: May 7, 2002.

Description of amendment request: The proposed amendment would modify technical specification (TS) requirements for meeting surveillances in TS 4.0.a, TS requirements for missed surveillances in TS 4.0.c, and TS requirements for a Bases control program consistent with TS Bases Control Program described in Section 5.5 of NUREG–1431, Standard Technical Specifications for Westinghouse Plants, Revision 2. The delay period would be extended from the current limit of '' * * * up to 24 hours or up to the limit of the time interval, whichever is less'' to '' * * * up to 24 hours or up to the limit of the time interval, whichever is greater.'' In addition, the following requirement would be added to surveillance requirement 4.0.E: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated May 7, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: L. Raghavan.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1 (VCSNS), Fairfield County, South Carolina

Date of amendment request: May 8, 2002.

Description of amendment request: The proposed change will exclude the control room normal and emergency air handling system from the requirement to apply Technical Specification (TS) 3.0.4 to actions required by Limiting Condition for Operation 3.7.6 in Modes 5 and 6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

South Carolina Electric & Gas Company (SCE&G) has evaluated the proposed changes to the VCSNS TS described above against the significant Hazards Criteria of 10 CFR 50.92 and has determined that the changes do not involve any significant hazard. The following is provided in support of this conclusion.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to Technical Specification 3.7.6 does not contribute to the initiation of any accident previously evaluated. The actions within the VCSNS TS associated with the control room normal and emergency air handling system during shutdown (i.e., Modes 5, 6, and defueled) and during the handling of irradiated fuel does not require any physical modification to plant components or systems. Implementing the proposed action has no impact on the probability of an accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to Technical Specification 3.7.6 does not contribute to the initiation of any accident previously evaluated. The actions within the VCSNS TS associated with the control room normal and emergency air handling system during shutdown (i.e., Modes 5, 6, and defueled) and during the handling of irradiated fuel do not introduce any new accident initiator mechanisms. The exclusion of the provisions of Specification 3.0.4 requirements from Specification 3.7.6 Mode 5 and 6, action requirements does not cause the initiation of any accident nor create any new credible limiting single failure nor result in any event previously deemed incredible being made credible. As such, it does not create the possibility of an accident different than any evaluated in the FSAR [Final Safety Analysis Report].

3. Does this change involve a significant reduction in margin of safety?

Response: No.

When invoked, the proposed change will allow operational transitions involving Modes 5 and 6 within the remedial measures currently defined in the specification, including the following when one train is inoperable:

• A 7-day AOT [allowed outage time] to restore an inoperable train to OPERABLE status.

• Operation of the OPERABLE control room emergency air cleanup system in the recirculation mode.

Although the overall reliability of the system is reduced because a single failure in the OPERABLE train could result in a loss of function, the 7-day AOT provides adequate margins of safety because of the low probability of a design basis accident (DBA) occurring during this time period and the ability of the remaining train to provide the required capability. Adequate margins of safety are also provided by the alternative action that places the unit in a protected condition because this ensures the remaining train is operating, that no failure preventing automatic actuation will occur, and that any active failure can be readily detected.

With two trains inoperable, action must be taken immediately to suspend activities that could result in a release of radioactivity that might enter the control room. This places the unit in a condition that minimizes accident risk. This does not preclude the movement of fuel to a safe position.

Given the degree of protection provided by the current specification, exclusion * * * of the provisions of Specification 3.0.4 is judged to not result in a significant reduction in the margin of safety as described in the bases of any Technical Specification.

Pursuant to 10 CFR 50.91, the preceding analyses provides a determination that the proposed Technical Specifications change poses no significant hazard as delineated by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: John A. Nakoski

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 23, 2002.

Description of amendment request: The proposed amendment revises the Shutdown Margin limits to Core Operating Limits Report and does not change any requirements that are currently in place.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to relocate the Shutdown Margin limits to the Core Operating Limits Report [COLR] does not change any requirements that are currently in place. No actual plant equipment or accident analyses will be affected by the proposed change. The Shutdown Margin limits in the COLR will continue to be controlled by the STP [South Texas Project] programs and procedures. The safety analysis addressed in the UFSAR [updated final safety analysis report] will be examined with respect to changes in these limits, which are obtained using NRC-[Nuclear Regulatory Commission] approved methodologies. Changes to the COLR will be conducted per the requirements of 10 CFR 50.59.

The proposed changes to modify the Specification action requirements changing the structure of the specifications to be more consistent with NUREG 1431, Westinghouse Improved Standard Technical Specifications have no technical impact. The changes clarify time requirements and remove details that remain consistent with the UFSAR safety analysis. The changes have no effect on the reactivity control systems to perform their design functions and involve no change to the accident analyses.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes have no influence or impact on, nor do they contribute in any way to the probability or consequences of an accident. No safety-related equipment or safety function will be altered as a result of these proposed changes. The SDM [shutdown margin] will continue to be calculated using the NRC-approved methods that will be submitted to the NRC. The Technical Specifications will continue to require operation within these reactivity limits.

The proposed change modifies the Specification action requirements but does not change the way the system is operated. When the limiting condition for operation is exceeded, the boration control system will continue to be operated in a manner consistent with the safety analyses. The details concerning boron flow rate and concentration that are removed from the Specifications will be added to the TS [technical specification] Bases for the purposes of providing an example.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will the change involve a significant reduction in a margin of safety?

Response: No.

The relocation of the Shutdown Margin limits to the COLR will not change any requirements. The values for SDM will remain consistent with the UFSAR and will continue to provide their safety function through the Shutdown Margin Specification. Actions required to be taken to restore SDM will remain in the TS. Therefore, the proposed change will not affect the limits on reactivity control, and will not permit operations that could result in exceeding these limits.

The proposed change modifies action requirements for restoring shutdown margin or refueling boron concentration. The combination of parameters currently in the Specification that are being removed discuss one means, where as several system lineups and boration sources have been evaluated in the safety analysis as acceptable to restore Shutdown Margin. Also, the time requirements for the action were modified to be consistent with the safety analysis assumptions. No actual accident analyses will be affected by these proposed changes. The proposed change will not affect reactivity control limits and will not permit operations that could result in exceeding these limits.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of

10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A.H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 23, 2002

Description of amendment request: The proposed amendment revises the Unit 2 Operating License and several sections of Technical Specifications to delete information differentiating between Unit 1 and Unit 2 specific to Model E steam generators.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Operating Licenses currently reflect plant operation with both Delta 94 and Model E SGs [steam generators], but all Model E SGs will be replaced with Delta 94 SGs by the end of 2002. The proposed administrative change deletes information associated with the Model E SGs and deletes references to Delta 94 SGs. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The Operating Licenses currently reflect plant operation with both Delta 94 and Model E SGs, but all Model E SGs will be replaced with Delta 94 SGs by the end of 2002. The proposed administrative change deletes information associated with the Model E SGs and deletes references to Delta 94 SGs. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The Operating Licenses currently reflect plant operation with both Delta 94 and Model E SGs, but all Model E SGs will be replaced with Delta 94 SGs by the end of 2002. The proposed administrative change deletes information associated with the Model E SGs and deletes references to Delta 94 SGs. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A.H. Gutterman, Esq., Morgan, Lewis, & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 23, 2002.

Description of amendment request: The proposed amendment revises Technical Specifications Limiting Conditions for Operation 3.7.1.5, Main Steam Isolation Valves, and 3.7.1.7, Main Feedwater Isolation Valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change extends the action completion time for one MSIV [main steam isolation valve] in Mode 1, and one or more in Mode 2 and 3, from 4 hours to 8 hours. Extending the completion time is not an accident initiator and thus does not change the probability that an accident will occur. However, it could potentially affect the consequences of an accident if an accident occurred during the extended unavailability of the inoperable MSIV. The increase in time that the MSIV is unavailable is small and the probability of an event occurring during this time period, which would require isolation of the main steam flow paths, is low.

The proposed change extends the action completion time for one or more MFIVs [main feedwater isolation valves] from 4 hours to 72 hours. Extending the completion time is not an accident initiator and thus does not change the probability that an accident will occur. However, it could potentially affect the consequences of an accident if an accident occurred during the extended unavailability of the inoperable MFIV. The increase in time that the MFIV is unavailable is small and the probability of an event occurring during this time period, which would require isolation of the main feedwater flow paths, is low.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Closure of the MSIVs is required to mitigate the consequences of large Steam Line Break inside containment. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Closure of the MFIVs is required to mitigate the consequences of the Main Steam Line Break and Main Feedwater Line Break accidents. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not change any Technical Specification Limit or accident analysis assumption. Therefore it does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A.H. Gutterman, Esq., Morgan, Lewis, & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

Virginia Electric and PowerCompany, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: May 14, 2002.

Description of amendment request: The proposed changes would revise the Technical Specifications and associated Bases to revise the surveillance frequency of the containment spray and recirculation spray system spray header nozzles from a periodic surveillance to a performance-based surveillance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed revision to Technical Specifications changes the frequencies of the surveillance requirements for the Containment Spray and Recirculation Spray nozzles. The frequency is being changed from every 10 years to ''following maintenance which could result in nozzle blockage.'' In accordance with the requirements of 10 CFR 50.92, the enclosed application is judged to

involve no significant hazards based upon the following information:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change revises the surveillance frequencies from every 10 years to ''following maintenance which could result in nozzle blockage.'' Analyzed events are initiated by the failure of plant structures, systems, or components. The Containment Spray and Recirculation Spray Systems are not considered to be initiators of any analyzed event. The proposed change does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. As a result, the probability of any accident previously evaluated is not significantly increased.

The proposed change revises the surveillance frequencies. Reduced testing is justified where operating experience has shown that routinely passing a surveillance test performed at a specified interval has no apparent connection to overall component reliability. In this case, routine surveillance testing at the specified frequency is not connected to any activity, which may initiate reduced component reliability, and therefore has been of limited value in ensuring component reliability. Thus, the proposed frequency change is not significant from a reliability standpoint. The proposed containment spray and recirculation spray nozzle surveillance frequencies have been established based on achieving acceptable levels of equipment reliability.

This change does not affect the plant design. Due to the plant design, the spray ring headers are maintained dry. Formation of significant corrosion products is unlikely. Due to their location at the top of the containment, introduction of foreign material from exterior to the headers is unlikely. Since maintenance that could introduce foreign material is the most likely cause for obstruction, testing or inspection following such maintenance would verify the nozzle(s) remain unobstructed and the systems' continued capability to perform their safety function(s). As a result, the consequences of any accident previously evaluated are not significantly affected by the proposed change in surveillance frequencies.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The margin of safety for this system is based on the capacity of the spray headers. The system is not susceptible to corrosion induced obstruction or obstruction from external sources to the system. Performance of maintenance on a spray ring header would now require evaluation of the potential for nozzle blockage and the need for a test or inspection. Consequently, the spray header nozzles should remain unblocked and available in the event that the safety function is required. Hence, the change in surveillance frequencies does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: July 9, 2001.

Brief description of amendment: The amendment revises the Technical Specifications to be consistent with changes made to 10 CFR 50.59, ''Changes, tests, and experiments.''

Date of issuance: June 4, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 151.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44162). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 4, 2002.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: September 11, 2001, as supplemented on April 8, 2002.

Brief description of amendment: The amendment revised the Technical Specifications, deleting the cycle-specific footnote regarding the safety limit minimum critical power ratio in Section 2.1.A, and making associated administrative changes.

Date of Issuance: May 31, 2002.

Effective date: May 31, 2002, and shall be implemented within 30 days of issuance.

Amendment No.: 228.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 28, 2001 (66 FR 59501). The April 8, 2002, letter provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 31, 2002.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: June 4, 2001, as supplemented July 20, 2001.

Brief Description of amendments: The proposed license amendments change the Technical Specifications Surveillance Frequency and Action Requirements for the suppression chamber-to-drywell vacuum breakers at the Brunswick Steam Electric Plant, Units 1 and 2.

Date of issuance: June 3, 2002.

Effective date: As of date of issuance and shall be implemented within 30 days from date of issuance.

Amendment Nos.: 223 and 248.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 27, 2001 (66 FR 34280). The July 20, 2001, supplement contained clarifying information only, and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 3, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 27, 2001.

Brief description of amendment: This amendment revised Technical Specification (TS) 3/4.6.1.3, ''Containment Systems—Containment Air Locks'' and the associated TS Bases section.

Date of issuance: June 7, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 267.

Facility Operating License No. DPR–65: This amendment revised the TSs.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55010). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 7, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: August 6, 2001.

Brief description of amendments: The amendments revise the Technical Specification 3.3.1 allowable values for the reactor trip system instrumentation overtemperature delta temperature and overpower delta temperature set points.

Date of issuance: May 23, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 202 and 183.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2920). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 23, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: January 8, 2002, as supplemented on April 15, 2002.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.4.1, ''Main Steam Safety Valves,'' to reduce the maximum allowable power range neutron flux high setpoint when one or more main steam line safety valves are inoperable. The amendment also revises the associated TS Basis to incorporate a more conservative equation to calculate this setpoint.

Date of issuance: June 4, 2002.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 228.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10012). The April 15, 2002, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 4, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: January 8, 2002.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.8, ''Refueling, Fuel Storage and Operations with the Reactor Vessel Head Bolts Less Than Fully Tensioned,'' and TS 4.5.F, ''Fuel Storage Building Air Filtration System,'' by deleting the requirements for the Fuel Storage Building Air Filtration System. The amendment also revised the associated Basis sections.

Date of issuance: June 5, 2002.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 229.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10013). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: March 13, 2002, as supplemented by letter dated May 23, 2002.

Brief description of amendment: The amendment corrects several errors that were found subsequent to Nuclear Regulatory Commission issuance of Amendment No. 215, which converted the Plant Technical Specifications (TSs) for Arkansas Nuclear One, Unit 1 to Improved TSs.

Date of issuance: June 10, 2002.

Effective date: As of the date of issuance and shall be implemented in conjunction with the implementation of Amendment No. 215.

Amendment No.: 218.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications/license.

Date of initial notice in ***Federal Register:*** April 30, 2002 (67 FR 21287).

The supplemental letter dated May 23, 2002, provided additional information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: May 2, 2001, as supplemented by letter dated March 20, 2002.

Brief description of amendment: The amendment relocated the requirements for the containment recirculation system from the Technical Specifications to the Technical Requirements Manual.

Date of issuance: May 31, 2002.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 245.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 30, 2001 (66 FR 29352). The March 20, 2002, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–237, Dresden Nuclear Power Station, Unit 2, Grundy County, Illinois

Date of application for amendment: September 5, 2001.

Brief description of amendment: The amendment revises the battery terminal voltage on float charge for the alternate battery.

Date of issuance: June 6, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 193.

Facility Operating License No. DPR–19: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10013). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 6, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: July 9, 2001.

Brief description of amendments: Replace the phrase ''involves an unreviewed safety question as defined in'' with ''requires NRC approval pursuant to,'' maintaining reference to 10 CFR 50.59, ''Changes, tests, and experiments,'' in order to provide consistency with changes to 10 CFR 50.59 as published in the **Federal Register** (64 FR 53582) dated October 4, 1999.

Date of issuance: June 4, 2002.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment Nos.: 182 and 169.

Facility Operating License Nos. DPR–39 and DPR–48: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44170). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 4, 2002.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: February 20, 2002.

Brief description of amendments: These amendments revised TS 3/4.6.5, ''Vacuum Relief Valves,'' to make the Limiting Condition for Operation applicable to vacuum relief ''lines'' and extend the allowed outage time for the containment vacuum relief lines from 4 hours to 72 hours. Also, some specific requirements for surveillance testing and valve actuation setpoints are relocated to the TS Bases documents.

Date of Issuance: May 30, 2002.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 182 and 125.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 19, 2002 (67 FR 12602). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 30, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: February 12, 2002

Brief description of amendment: The amendment revises Surveillance Requirement (SR) 4.0.E to extend the delay period, prior to having to declare the subject equipment inoperable, following a missed surveillance. The delay period is extended from the current limit of '' * * * up to 24 hours or up to the limit of the time interval, whichever is less'' to '' * * * up to 24 hours or up to the limit of the time interval, whichever is greater.'' In addition, the following requirement is added to SR 4.0.E: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: May 31, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 127.

Facility Operating License No. DPR–22: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 2, 2002 (67 FR 15625). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 2002.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: March 27, 2002, as supplemented by letter dated May 9, 2002.

Brief description of amendment: The amendment revises the maximum allowable value of the reactor protective system (RPS) variable high power trip (VHPT) setpoint from 107.0% to 109.0%. Specifically, TS Table 1–1, ''RPS Limiting Safety System Settings,'' in the Trip Setpoints column for Trip Number 1 [High Power Level (A) 4-Pump Operation] has been revised from 107.0% to 109.0%. In addition, TS Section 1.3(1), ''Basis,'' describing the high power trip initiation, has been revised from 107.0% to 109.0%.

Date of issuance: May 29, 2002.

Effective date: May 29, 2002, to be implemented within 30 days from the date of issuance.

Amendment No.: 210.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards

consideration: Yes (67 FR 34478 dated May 14, 2002). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by June 13, 2002, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Nebraska and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 29, 2002.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: March 18, 2002.

Brief description of amendment: The amendment revises Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: June 12, 2002.

Effective date: June 12, 2002.

Amendment No.: 82.

Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 30, 2002 (67 FR 21293). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 12, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: January 24, 2002.

Brief Description of amendments: The amendments delete Technical Specifications Section 5.5.3, ''Post Accident Sampling,'' for Farley Nuclear Plant, Units 1 and 2, and thereby eliminated the requirements to have and maintain the post-accident sampling systems.

Date of issuance: May 22, 2002.

Effective date: As of the date of issuance and shall be implemented by December 31, 2002.

Amendment Nos.: 156 and 148.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 30, 2002 (67 FR 21293). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 22, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: November 8, 2001, as amended by your letter dated April 8, 2002.

Brief description of amendments: The amendments deleted various reporting requirements from the Sequoyah Technical Specifications (TSs) because they are duplicative to the requirements of 10 CFR 50.72 and 10 CFR 50.73. One exception was reporting of steam generator tube inspection results, TS 4.4.5.5.c, which is more stringent than 10 CFR 50.72 and 10 CFR 50.73. Therefore, the request to delete this TS was denied.

Date of issuance: May 24, 2002.

Effective date: Date of issuance, to be implemented within 45 days of issuance.

Amendment Nos.: 276 and 267.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** February 5, 2002 (67 FR 5339). The supplemental letter provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 24, 2002.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: August 24, 2001, as supplemented by letter dated April 15, 2002.

Brief description of amendments: The amendments extend the surveillance test interval from ''92 days'' to ''18 months'' for Westinghouse Electric Company Type AR relays with alternating current coils used as Solid State Protection System slave relays, in Surveillance Requirement (SR) 3.3.2.6 and auxiliary (i.e., interposing) relays in the containment ventilation isolation system in SR 3.3.6.5.

Date of issuance: May 31, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 96 and 96.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 17, 2001 (66 FR 52804). The April 15, 2002, supplement provided clarifying information and did not change the original no significant hazards determination consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 2002.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: May 31, 2001, as supplemented by letters dated October 17, 2001, and March 5, 2002.

Brief Description of amendments: These amendments revise the Technical Specifications to add a 14-day allowed outage time for the power-operated relief valve backup air supply, and additional surveillance, functional testing, and calibration requirements.

Date of issuance: May 31, 2002.

Effective date: May 31, 2002.

Amendment Nos.: 231 and 231.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64310). The supplements dated October 17, 2001, and March 5, 2002, provided clarifying information that did not change the scope of the May 31, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 14th day of June 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–15683 Filed 6–24–02; 8:45 am]

BILLING CODE 7590–01–P

COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: U.S. Commission on Ocean Policy.

ACTION: Notice.

SUMMARY: The U.S. Commission on Ocean Policy will hold its seventh regional meeting, the Commission's ninth public meeting, to hear and discuss coastal and ocean issues of concern to the Northeast region of the United States, covering the area from New Jersey to Maine.

DATES: Public meetings will be held Tuesday, July 23, 2002 from 12:30 p.m. to 6 p.m. and Wednesday, July 24, 2002 from 8:30 a.m. to 6 p.m.

ADDRESSES: The meeting location is Historic Faneuil Hall, 0 Faneuil Hall Square, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW., Washington, DC, 20036, 202–418–3442, *schaff@oceancommission.gov.*

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Pub. L. 106–256, Section 3(e)(1)(E)). The agenda will include presentations by invited speakers representing local and regional government agencies and non-governmental organizations, comments from the public and any required administrative discussions and executive sessions. Invited speakers and members of the public are requested to submit their statements for the record electronically by Monday, July 15, 2002 to the meeting Point of Contact. A public comment period is scheduled for Wednesday, July 24, 2002. The meeting agenda, including the specific time for the public comment period, and guidelines for making public comments will be posted on the Commission's Web site at *http://www.oceancommission.gov* prior to the meeting.

Dated: June 19, 2002.

James D. Watkins,

Admiral, USN (Ret.), Chairman, U.S. Commission on Ocean Policy.

[FR Doc. 02–15948 Filed 6–24–02; 8:45 am]

BILLING CODE 6820–WM–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46085; File No. SR–Amex–2002–42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to a Six-Month Extension of the Exchange's Pilot Program for Automatic Execution of Orders for Exchange Traded Funds

June 17, 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 May 23, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Amex as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex seeks a six-month extension of Amex Rule 128A to continue its pilot program for the automatic execution of orders for Exchange Traded Funds (''ETFs''). The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 19, 2001, the Commission approved the Exchange's proposal, adopted as Amex Rule 128A, to permit the automatic execution of orders for ETFs on a six-month pilot program basis.[4] On December 20, 2001, the Exchange extended the pilot program for six months.[5] The Exchange now seeks to extend the pilot program for another six months.

Since 1986, the Exchange has had an automatic order execution feature (''Auto-Ex'') for eligible orders in listed options. The Chicago Board Options Exchange, Philadelphia Stock Exchange, and Pacific Exchange established similar automatic option order execution features at about the same time as the Amex, and the newest options exchange, the International Securities Exchange, also features automatic order execution. Auto-Ex, accordingly, has been a standard feature of the options markets for a number of years.

In 1993, the Amex commenced trading Standard and Poor's Depositary Receipts® (''SPDRs®''), the first ETF to be listed and traded on the Exchange. ETFs are individual securities that represent a fractional, undivided interest in a portfolio of securities. Currently, more than 100 ETFs are listed on the Amex. Like an option, an ETF is a derivative security, and, according to the Amex, its price is a function of the value of the portfolio of securities underlying the ETF. Thus, as is the case with options, the Exchange asserts that it is not the price discovery market for ETFs, and that the price discovery market is the market or markets where the underlying securities trade.

The Exchange is now proposing to extend its current Auto-Ex technology for an additional six months to ETFs listed under Amex Rules 1002, 1002A, and 1202. The Amex represents that this will provide investors that send eligible orders to the Exchange with faster executions than they otherwise would receive. The Exchange believes that many investors desire rapid executions in trading securities that are priced derivatively since the value of the underlying instruments may fluctuate

[4] *See* Securities Exchange Act Release No. 44449 (June 19, 2001), 66 FR 33724 (June 25, 2001) (''June Release'') (approving File No. SR–Amex–2001–29).

[5] *See* Securities Exchange Act Release No. 45176 (December 20, 2001), 66 FR 67582 (December 31, 2001) (notice of filing and immediate effectiveness of File No. SR–Amex–2001–105).

during order processing. The Amex, moreover, will continue under the pilot extension to incorporate a price improvement algorithm into Auto-Ex for ETFs, and thus to provide investors with better execution prices on their orders. The price improvement algorithm works in the following manner:

When the Amex establishes the National Best Bid or Offer (''NBBO''),[6] Auto-Ex is programmed to execute eligible incoming ETF orders at the APQ plus a programmable number of trading increments with respect to the Amex bid, and less a programmable number of trading increments in the case of the Amex offer. For example, if the APQ were 90.10 to 90.20, and the APQ constituted the NBBO, incoming sell orders might be automatically executed at 90.12 (the Amex bid plus two ticks) and incoming buy orders might be executed at 90.18 (the Amex offer less two ticks). If the Amex does not establish the NBBO, Auto-Ex is programmed to execute eligible incoming ETF orders at or better than the NBBO up to a specified number of trading increments relative to the APQ.[7] Auto-Ex executes an eligible order at the improved price relative to the APQ unless such execution would result in a trade-through with respect to the price of an away market that is a participant in the Intermarket Trading System (''ITS''). If a trade through would result, the order is routed to the specialist for electronic processing through the Amex electronic order book.[8]

For example, assume that Auto-Ex is programmed to execute the order at the Amex bid plus two ticks. If the Amex bid were 90, and an away ITS market were bidding 90.01, an incoming sell order would be automatically executed on the Amex at 90.02. Continuing with this example, if the away market were bidding 90.02, an incoming sell order would be automatically executed on the Amex at 90.02 (matching the away market). If the away market were bidding 90.03, the incoming sell order would not be automatically executed. Instead, it would be routed to the specialist for electronic processing through the Amex electronic order book.

The amount of price improvement that the system provides, both when the Amex establishes the NBBO and when it does not, is determined by the Auto-Ex Enhancements Committee (''Committee'') upon the request of a specialist and may differ among ETFs. The Committee consists of the Exchange's four Floor Governors and the Chairmen (or their designees) of the Specialists Association, Options Market Makers Association, and the Floor Brokers Association, respectively. The Exchange anticipates that the amount of price improvement will vary among securities based upon such factors as the width of the spread, the volatility of the basket of securities underlying the ETF, and liquidity of available hedging vehicles. The amount of price improvement may be adjusted intra-day by the Committee.

As detailed in Amex Rule 128A, Auto-Ex for ETFs with price improvement is unavailable when the spread is at a specified minimum and maximum variation, which may be adjusted security to security. The Committee will determine, upon the request of a specialist, the minimum and maximum spreads at which Auto-Ex is unavailable. As further provided in the rule, Auto-Ex is also unavailable with respect to incoming sell orders when the Amex bid is for 100 shares, and similarly unavailable with respect to incoming buy orders when the Amex offer is for 100 shares.

Orders that are otherwise Auto-Ex eligible orders are also routed to the specialist, and not automatically executed, in situations where the specialist in conjunction with a Floor Governor or two Floor Officials determine that quotes are not reliable and the Exchange is experiencing communications or systems problems, ''fast markets,'' or delays in the dissemination of quotes. Members and member organizations are notified when the Exchange has determined that quotes are not reliable prior to disengaging Auto-Ex.

Specialists and Registered Options Traders (''ROTs'') that sign onto the system are automatically allocated the contra side of Auto-Ex trades for ETFs. Due to the automatic price improvement feature, the specialist and ROTs that sign onto Auto-Ex for ETFs are deemed to be on parity for purposes of allocating the contra side of ETF Auto-Ex trades. Amex Rule 128A incorporates the following methodology for the allocation of the contra side to Auto-Ex ETF trades.

Number of ROTs signed on to auto-ex in a crowd	Approximate number of trades allocated to the specialist throughout the day (''target ratio'') (in percent)	Approximate number of trades allocated to ROTs signed on to auto-ex throughout the day (''target ratio'') (in percent)
1	60	40
2–4	40	60
5–7	30	70
8–15	25	75
16 or more	20	80

At the start of each trading day, the sequence in which trades are to be allocated to the specialist and ROTs signed onto Auto-Ex is randomly determined. Auto-Ex trades then are automatically allocated in sequence on a rotating basis to the specialist and to the ROTs that have signed onto the system so that the specialist and the crowd achieve their ''target ratios'' over the course of a trading session. If an Auto-Ex eligible order is greater than 100 shares, Auto-Ex divides the trade into lots of 100 shares each. Each lot is considered a separate trade for purposes of determining target ratios and allocating trades within Auto-Ex.

Round lot orders delivered to the post electronically for 2,000 shares or less are eligible for Auto-Ex for ETFs. Orders for an account in which a market maker in ETFs registered as such on another market has an interest are ineligible for Auto-Ex for ETFs. If orders for such market makers were eligible for Auto-Ex with price improvement, the Exchange represents, Amex specialists and ROTs would be unable to make markets with the proposed liquidity for other investors. (Orders for Amex Registered Traders are ineligible for Auto-Ex for ETFs pursuant to Commentaries .04 and .05 to Rule 111 and Amex Rule 950(c).)

Amex Rule 128A also stipulates that Auto-Ex eligible orders for any account in which the same person is directly or indirectly interested may be entered only at intervals of 30 seconds or more between the entry of each such order in an ETF. The Exchange indicates that Amex specialists and ROTs are willing to provide Auto-Ex with price improvement for orders of a certain size. If persons were allowed to enter more than one Auto-Ex eligible order for an account in which they had a direct or indirect interest at intervals of less than 30 seconds, according to the Exchange,

[6] The term ''establish'' as used in this context of Amex Rule 128A means that the Amex Published Quote (''APQ'') is currently at the NBBO, regardless of whether or not the Amex was the first exchange to be at that price. *See* June Release, *supra* note 4.

[7] The number of trading increments designated for price improvement when the Amex established the NBBO may be different than the number of increments designated for price improvement when the Amex does not establish the NBBO. *Id.*

[8] Once an order that is Auto-Ex eligible is sent to the Exchange, the person that initiated the order has no control over its execution. This is the case regardless of whether the order is executed by Auto-Ex or is executed by the specialist because Auto-Ex is unavailable. If the order is routed to the specialist for handling because Auto-Ex is unavailable, the specialist does not know if the order is for the account of a broker-dealer or for the account of a customer. This information is in the Exchange's order processing systems and is unavailable to the specialist.

Amex specialists and ROTs would be unable to make markets with the proposed liquidity for all investors. Under Amex Rule 128A, members and member organizations are responsible for establishing procedures to prevent orders for any account in which the same person is directly or indirectly interested from being entered at intervals of less than 30 seconds with respect to an ETF.

The specialist may request the Exchange to increase the maximum size of Auto-Ex eligible orders. Under Amex Rule 128A, such requests are reviewed by the Committee, which approves, disapproves, or conditionally approves such requests. The rule directs the Committee to balance the interests of investors, the specialist, ROTs in the crowd, and the Exchange in determining whether to grant a request to increase the size of Auto-Ex eligible orders. The Committee also may consider requests from the specialist or ROTs to reduce the size of Auto-Ex eligible orders, balancing the same interests that it would consider in reviewing a request to increase the size of Auto-Ex eligible orders. The Committee is not permitted, however, to reduce the size of Auto-Ex eligible orders below 2,000 shares.

In addition, under Amex Rule 128A, the Committee may delegate its authority to one or more Floor Governors. The rule provides, however, that the Committee must meet promptly to review a Floor Official's decision in the event that a Floor Governor acts pursuant to delegated authority.

Amex Rule 128A further provides that in the event of system problems or unusual market conditions, a Floor Governor is permitted to reduce the size of Auto-Ex eligible orders below 2,000 shares or increase the size of Auto-Ex eligible orders up to 5,000 shares. Any such change is temporary and lasts only until the end of the unusual market condition or the correction of the system problem. Members and member organizations will be notified when the size of Auto-Ex eligible orders is adjusted due to system problems or unusual market conditions.

Amex Rule 128A also provides that the Chairman and Vice Chairman of the Exchange, acting jointly, will determine which ETFs are Auto-Ex eligible.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [9] in general, and furthers the objectives of section 6(b)(5) of the Act [10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engage in regulating, clearing, settling, 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 a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The proposed rule change will allow the Auto-Ex for ETFs pilot program to continue for an additional six months. The proposal also facilitates the comparison and settlement of trades since Auto-Ex transactions result in ''locked-in'' trades. Auto-Ex for ETFs, moreover, automatically provides investors with price improvement on their orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal, in fact, will enhance competition among markets and market makers and thereby benefit investors by allowing the Exchange to continue to provide Auto-Ex for ETFs with price improvement.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate. The proposed rule change has therefore become effective pursuant to section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

The Amex has requested that the Commission waive the usual five-day notice and 30 day pre-operative waiting periods. The Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date and to waive the five-day notice period so that the pilot can continue uninterrupted. Thus, the Commission waives the five-day notice period and designates June 20, 2002 as the operative date of the proposed rule change.[13] The pilot extension will expire December 19, 2002.

At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–42 and should be submitted by July 16, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15920 Filed 6–24–02; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court entered, the United States Small Business Administration hereby revokes the license of Preferential Capital Corporation, a New York corporation, to function as a small business investment company under the Small Business Investment Company License No. 02/02–0372 issued to Preferential Capital Corporation on September 14, 1979 and said license is hereby declared null and void as of June 12, 2002.

United States Small Business Administration

Dated: June 13, 2002.

Margaret T. Dennin,

Chief Administrative Officer, Investment Division.

[FR Doc. 02–15815 Filed 6–24–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Office of Foreign Missions

[Public Notice 4053]

60–Day Notice of Proposed Information Collection: Form DS–98, Application for Diplomatic Exemption From Taxes on Utilities; and Form DS–99, Application for Diplomatic Exemption From Taxes on Gasoline (OMB Control Number 1405–0069)

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the reinstatement of the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection reinstatement request to be submitted to OMB:

Type of Request: The reinstatement of a previously approved collection of information for which OMB approval has expired.

Originating Office: Bureau of Diplomatic Security, Office of Foreign Missions, Vehicle, Tax and Customs Unit, DS/OFM/VTC.

Title of Information Collection: Applications for Diplomatic Exemption from Taxes on Utilities and Application for Diplomatic Exemption from Taxes on Gasoline, Forms DS–98—DS–99

Frequency of Collection: As necessary. 1256 (DS–98) and 1600 (DS–99) Requests were submitted during CY 2001.

Respondents: Eligible foreign missions in the U.S. and their staffs, diplomats assigned to certain international organizations, and military personnel assigned to foreign missions.

Form Number: Form DS–98—Application for Exemption from Taxes on Utilities.

Estimated Number of Respondents: Approximately 1256.

Average Hours Per Response: Approximately one minute per response

Total Estimated Burden: Approximately 20 hours.

Respondents: Eligible foreign missions in the U.S. and their staffs, diplomats assigned to certain international organizations, and military personnel assigned to foreign missions.

Form Number: Form DS–99—Application for Exemption from Taxes on Gasoline.

Estimated Number of Respondents: Approximately 1600

Average Hours Per Response: Approximately one minute per response

Total Estimated Burden: Approximately 28 hours

Public comments are being solicited to permit the agency to:

- Evaluate whether the extension of this information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Mr. E. McGill, DS/OFM/VTC, 3507 International Place, NW, Wash., DC 20008, who may be reached on 202–895–3618.

Dated: May 15, 2002.

Theodore Strickler,

Deputy Assistant Secretary, Bureau of Diplomatic Security Department of State.

[FR Doc. 02–15972 Filed 6–24–02; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice #4037]

Notice of Meeting; United States International Telecommunication Advisory Committee Preparations for CITEL Assembly

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on policy, technical and operational issues with respect to international telecommunications standardization bodies such as the Inter-American Telecommunications Commission of the Organization of American States. The ITAC will meet from 9:30 to noon on July 1, 2002 at the Department of State in room 1207. This meeting will address preparations for the CITEL Assembly.

Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. People intending to attend the meeting should send a fax to (202) 647–7407 or e-mail to *worsleydm@state.gov* not later than 24 hours before the meeting. Please include the name of the meeting, your name, social security number, date of birth and organization. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or U.S. Government identification. Directions to the meeting location and on which entrance to use may be determined by calling the ITAC Secretariat at (202) 647–2592 or e-mail to *worsleydm@state.gov.* Attendees may join in the discussions, subject to the instructions of the Chair. Admission of participants will be limited to seating available.

Dated: June 12, 2002.

Frank Williams,

Director, WRC Preparations, Department of State.

[FR Doc. 02–15975 Filed 6–24–02; 8:45 am]

BILLING CODE 4710–45–P

STATE DEPARTMENT

[Public Notice 4035]

Overseas Security Advisory Council (OSAC) Meeting Notice: Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on July 16 and 17 at the Pepperdine University in California. Pursuant to Section 10(d) of the Federal Advisory

Committee Act and 5 U.S.C. 552b[c][1] and [4], it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda will include updated committee reports, a world threat overview and a round table discussion that calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–1003, phone: 202–663–0533.

Dated: June 10, 2002.

Peter E. Bergin,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. 02–15973 Filed 6–24–02; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–11724]

Information Collection Under Review by the Office of Management and Budget (OMB): 2115–0071 and 2115–0038

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the two Information Collection Reports (ICRs) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before July 25, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2002–11724] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Docket Management Facility at 202–493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at oira_docket@omb.eop.gov attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a Web site on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available for inspection and copying in public dockets. They are available in docket USCG 2002–11724 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the Internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published [67 FR 11156 (March 12, 2002)] the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the Department's estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collection; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2002–11724. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

1. *Title:* Official Logbook.

OMB Control Number: 2115–0071.

Type of Request: Extension of a currently approved collection.

Affected Public: Shipping companies.

Form: CG–706B.

Abstract: The official logbook contains information about the voyage, the ship's crew, drills, and operations conducted during the voyage. Its entries identify all particulars of the voyage, including the name of the ship, the official number, the port of registry, the tonnage, the names and the numbers of the merchant mariners' documents of the master and crew, the nature of the voyage, and the class of ship. It also contains entries for the ship's drafts, maintenance of watertight integrity of the ship, drills and inspections, crew list and report of character, a summary of laws applicable to logbooks, and miscellaneous entries.

Annual Estimated Burden Hours: The estimated burden is 1,750 hours a year.

2. *Title:* Applications for Private Aids to Navigation and for Class I Private Aids to Navigation on Artificial Islands and Fixed Structures.

OMB Control Number: 2115–0038.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners of private aids to navigation.

Forms: CG–2554 and CG–4143.

Abstract: The collection of information requires respondents to provide to the Coast Guard, on two applications (CG–2554 and CG–4143), vital information about private aids to navigation.

Annual Estimated Burden Hours: The estimated burden is 3,037 hours a year.

Dated: June 18, 2002.

N.S. Heiner,

Acting Director of Info. & Tech.

[FR Doc. 02–15906 Filed 6–24–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–12530]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee of the Chemical Transportation Advisory Committee (CTAC) on Vessel Cargo Tank Overpressurization will meet to continue working on their subcommittee task statement. The subcommittee will meet to discuss final recommendations for CTAC in an effort to prevent cargo tank overpressurization during inerting, padding, purging, line clearing, and railcar transfer operations. This meeting will be open to the public.

DATES: The subcommittee will meet on Monday, July 8, 2002, from 9 a.m. to 4 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before July 3, 2002. Requests to have a copy of your material distributed to each member of the subcommittee should reach the Coast Guard on or before July 3, 2002.

ADDRESSES: The subcommittee will meet at Stolt-Nielsen Transportation Group Ltd., 15635 Jacintoport Blvd., Houston, Texas. Send written material and requests to make oral presentations to Lieutenant Michael McKean, Coast Guard technical representative for the subcommittee, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael McKean, the Coast Guard technical representative for the subcommittee, telephone 202–267–0087, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda of the CTAC Subcommittee on Vessel Cargo Tank Overpressurization includes the following:

(1) Introduce subcommittee members and attendees.

(2) Briefly review subcommittee tasking and desired outcome.

(3) Discuss and document final recommendations to CTAC for the development of an industry standard that will address the prevention of cargo tank overpressurization during inerting, padding, purging, line clearing, and railcar transfer operations.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. All attendees at the meeting are encouraged to fully review the subcommittee's past work prior to the meeting. Copies of the subcommittee's past work can be obtained from Lieutenant Michael McKean, telephone 202–267–0087, fax 202–267–4570. Information is also available from the CTAC Internet Web site at: *www.uscg.mil/hq/g-m/advisory/ctac.* At the discretion of the subcommittee chair, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Coast Guard technical representative for the subcommittee and submit written material on or before July 3, 2002. If you would like a copy of your material distributed to each member of the subcommittee in advance of the meeting, please submit 25 copies to the Coast Guard technical representative for the subcommittee no later than July 3, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the Coast Guard technical representative for the subcommittee as soon as possible.

Dated: June 19, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02–15905 Filed 6–24–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 28, 2002 on page 14,999.

DATES: Comments must be submitted on or before July 25, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Send comments to the Office of the Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Protection of Voluntarily Submitted Information.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0646.

Forms(s): N/A.

Affected Public: A total of 10 air carriers.

Abstract: The rule regarding the protection of voluntarily submitted information acts to ensure that certain non-required information offered by air carriers will not be disclosed. The

respondents apply to be covered by this program by submitting an application letter notifying the Administration that they wish to participate.

Estimated Annual Burden Hours: An estimated 5 hours annually.

Issued in Washington, DC, on June 20, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 02–15999 Filed 6–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–43]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. 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 July 15, 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–2000–XXXX 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: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 20, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12179.

Petitioner: State of Kansas.

Section of 14 CFR Affected: Certain sections of 14 CFR parts 1, 119, and 135.

Description of Relief Sought: To permit the Governor of the State of Kansas to reimburse the State for the costs of using the State's executive aircraft (any turbine-powered multi-engine aircraft owned or leased by the State for executive transportation and operated by professional pilots employed by the State) when that aircraft is used for personal travel by the Governor, the Governor's family, and their guests when accompanying them. The State of Kansas seeks a permanent exemption.

[FR Doc. 02–15980 Filed 6–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–42]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and correction.

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 July 15, 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–200X–XXXXX 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: Sandy Buchanan-Sumter, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7271.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 20, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–11565.

Petitioner: Fresh Water Adventures, Inc.

Section of 14 CFR Affected: 14 CFR 135.267(f).

Description of Relief Sought: To permit Fresh Water Adventures, Inc. to provide each flight crewmember at least 13 rest periods of at least 24 consecutive hours each in each 3-month period beginning in February instead of in each calendar quarter.

Correction

Docket No.: FAA–2002–11712.

Petitioner: Franklin P. Toups.

Section of 14 CFR Affected: 14 CFR 61.65(a)(1) and 61.153(d)(1).

Description of Relief Sought: On April 23, 2002, a summary of this petition was published in the **Federal Register** (67 FR 19795) with the incorrect docket number (FAA–2002–11565). The exemption, if granted, would permit Franklin P. Toups to take a single check ride to obtain his ATP and instrument rating.

Issued in Washington, DC, on May 20, 2002.

Donald P. Byrne,

[FR Doc. 02–15982 Filed 6–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12536]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel IN THE MOOD.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before July 25, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12536. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* IN THE MOOD. *Owner:* Don and Judith Ann Durant.

(2) Size, capacity and tonnage of vessel. *According to the Certificate of Documentation:* Gross tonnage: 36; Net tons: 28; Length: 42.3; Breadth: 15; Depth: 8.5.

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''The intended use is to offer training in the operation of single engine trawler yachts and crewed charters for six passengers or less. The proposed area of navigation is United States Pacific coastal and inland waters from the Mexican border to and including Alaska, no more than 200 miles offshore.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1985. *Place of construction:* Taiwan, ROC.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''The vessel owners own and operate Club Nautique, a California corporation engaged in offering operator training, bareboat and crewed charters, and other yacht services. Club Nautique currently offers operator training and charters in semi-displacement trawler yachts. The company would like to offer training and charters in full displacement trawlers, but knows of none suitable for the purpose built by U.S. boat yards. The applicant * * * believes the granting of a waiver will have little or no impact on other commercial passenger vessel operators.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''The applicant believes the granting of a waiver will have little or no impact on U.S. shipyards, as no domestic yacht builders are currently offering a vessel of this type.''

Dated: June 19, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–15996 Filed 6–24–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–8677; Notice 2]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on the proposed collection of information.

This document describes a proposed collection of information under the ''early warning reporting'' provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act and related recordkeeping provisions, for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before August 26, 2002.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the

beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. The Docket is open on weekdays from 9:30 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. George Person, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Room 5326, Washington, DC 20590. Mr. Person's telephone number is (202) 366–5210.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA), before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

On December 21, 2001, NHTSA published a Notice of Proposed Rulemaking (NPRM) (66 FR 66190) in which it proposed to implement section 3(b) of the TREAD Act by requiring manufacturers of motor vehicles and motor vehicle equipment to submit certain information to aid NHTSA in promptly identifying possible safety-related defects. NHTSA is currently reviewing and analyzing the comments submitted in response to the NPRM and is developing its final rule, which may include revised requirements.

In compliance with PRA requirements, NHTSA is asking for public comment on the collections of information proposed in the NPRM, including proposed recordkeeping provisions. If the final rule is issued before the end of the 60-day comment period for this notice, it would be helpful if the comments in response to this notice addressed the requirements adopted in the final rule.

Reporting of Information and Documents About Potential Defects; Retention of Records That Could Indicate Defects

Type of Request—New Collection.

OMB Clearance Number—None.

Requested Expiration Date of Approval—Three years from effective date of final rule.

Summary of Collection of Information—Section 3(b) of the TREAD Act, codified at 49 U.S.C. 30166(m), provides for NHTSA to adopt rules that will require manufacturers of motor vehicles and motor vehicle equipment to submit certain information to NHTSA, including information about claims and notices about deaths and serious injuries, property damage data, communications to customers and others, and information on incidents resulting in fatalities or serious injuries from possible defects in vehicles or equipment in the United States or in identical or substantially similar vehicles or equipment in foreign countries. The statute also authorizes NHTSA to require the submission of other data that may assist in the identification of safety-related defects in vehicles and equipment. The agency issued an NPRM on December 21, 2001 (66 FR 66190) in which it proposed reporting and recordkeeping requirements to implement this section of the statute.

Description of the Need for the Information and Proposed Use of the Information—The intent of the legislation is to provide NHTSA with ''early warning'' of potential safety-related defects in motor vehicles and motor vehicle equipment. NHTSA will rely on the information provided under this rule (as well as other relevant information) in deciding whether to open defect investigations.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information)—All manufacturers of motor vehicles and motor vehicle equipment would be required to comply with quarterly reporting requirements. As discussed in detail in the NPRM, larger manufacturers of vehicles (those that produce, import, or sell 500 or more units annually in the United States), and all manufacturers of child restraint systems and tires, would be required to provide information about incidents identified in claims and notices involving deaths (and injuries in the United States). They would also have to report the number of property damage claims, consumer complaints, warranty claims, and field reports that address certain specified systems and components of their products. We estimate that 87 manufacturers fall within this group of relatively large manufacturers.

All other motor vehicle and motor vehicle equipment manufacturers would only have to report information about incidents identified in claims and notices involving deaths. We estimate that 23,500 manufacturers would fall within this group of smaller vehicle manufacturers and equipment manufacturers (other than tire or child restraint manufacturers).

All manufacturers (in both categories) would be required to submit copies of all documents sent or made available to more than one dealer, distributor, or owner in the United States with respect to consumer advisories, recalls, or activities involving the repair or replacement of vehicles or equipment. However, almost all of these documents must already be submitted to NHTSA under an existing regulation. See 49 CFR 573.8, which implements 49 U.S.C. 30166(f).

Estimate of the Total Annual Reporting and Recordkeeping Burden of the Collection of Information in the NPRM

The first group of approximately 87 manufacturers with relatively extensive quarterly reporting requirements would consist of 16 light vehicle manufacturers, 12 medium and heavy vehicle manufacturers, 19 bus manufacturers, 8 trailer manufacturers, 12 motorcycle manufacturers, 10 tire manufacturers, and 10 child restraint system manufacturers.

The second group of approximately 23,500 manufacturers would rarely, if ever, have to report information to the agency. This group includes manufacturers of motor vehicles that sold fewer than 500 vehicles in the United States, manufacturers of original motor vehicle equipment, and manufacturers of replacement motor vehicle equipment other than child restraint systems or tires. This second group would be only required to report information in the rare event that they received a claim or notice about an incident involving a death alleging or proving that the death was caused by a possible defect in the manufacturer's product. We estimated only 8 such incidents would need to be reported per year from that entire group.

NHTSA estimated the annual hours of burden under the NPRM proposals to be 957,004 hours in the first year and 18,041 hours in the second and third years. The first-year total consists of 938,963 first year start-up hours plus 18,041 first year reporting hours. Of the 938,963 hours, 596,760 hours are associated with computer start-up activities and 342,203 hours are to provide the historical data. The average burden over the first three years would be 331,030 hours.

In late 2001, NHTSA made some preliminary estimates of the burdens associated with the NPRM proposals. These were discussed in the preamble to the NPRM and in a Preliminary Regulatory Evaluation (PRE), which was issued at the same time and was available to the public. Several interested persons commented on those estimates in their comments on the NPRM. In addition, the Alliance of Automobile Manufacturers (Alliance), which represents most of the large light vehicle manufacturers, submitted supplemental estimates of the costs and burden hours associated with the NPRM requirements. The estimates in this notice have taken these comments into account.

The hours of burden were estimated based on three primary factors. First, NHTSA considered the specific burden hour estimates associated with the various NPRM requirements that were provided by the Alliance and modified them where appropriate. Second, based on the average number of vehicles involved in recalls in 1996–2001, and a comparison of the number of recalled vehicles by the Alliance members with non-Alliance manufacturers, we extrapolated the Alliance-based numbers to estimate the number of documents that the non-Alliance manufacturers would have to report on each year. Third, the agency estimated the number of minutes per document that the manufacturers would spend determining what category a particular item belonged in and entering that data into their data systems. The agency assumed 5 minutes per document, except for foreign reports on deaths, which were assumed to take 15 minutes per document. Burden hours were determined by multiplying the minutes per document times the number of documents.

The total burden varied by manufacturer depending upon the number of documents that would have to be reviewed. Because the second group of manufacturers would be reporting so infrequently, we assumed that the report of each incident would be prepared manually, and that it would take four hours to determine what was required and to prepare the report. Thus, we estimated that the second group of manufacturers would spend 32 burden hours per year to report information on 8 incidents per year.

Estimate of the Total Annual Costs of the Collection of Information in the NPRM

The annual costs associated with the NPRM are estimated to be $88,580,141 in the first year and $1,721,877 in the second and third years. The average cost over the first three years would be $30,674,631. In the first year, start-up costs (including reprogramming computers) are estimated to be $65,300,000, the costs to report on historical information are estimated to be $21,558,264, and the costs to report on information for the first year are estimated to be $1,721,877.

The costs were estimated based on the factors discussed in the prior section, using estimates for the wage rates per hour for the skill levels for each type of activity that would be required. Wage rates, including overhead, were provided by the Alliance in a docket submission.

The total cost varied by manufacturer depending upon the number of documents that must be reviewed. Based on the assumptions described above, we estimated that the second group of manufacturers would spend $3,642 per year to report information on 8 incidents per year.

Summary Tables for Burdens and Costs Under the Requirements Proposed in the NPRM

The following tables show the burden hours and costs under the NPRM proposals by type of manufacturer. First year start-up burden/costs include computer start-up costs as well as the costs of gathering and reporting historical information. Total first year burden/costs can be calculated by adding the start-up burden/costs and the annual burden/costs.

ESTIMATED BURDEN HOURS UNDER THE NPRM

	First year start-up	First year	Second year	Third year	Average for the first 3 years
Light Vehicles	441,251	10,463	10,463	10,463	157,547
Medium/Heavy Vehicles	254,432	1,440	1,440	1,440	86,251
Buses	69,981	1,830	1,830	1,830	25,157
Trailers	7,520	715	715	715	3,222
Motorcycles	59,153	1,261	1,261	1,261	20,979
Tires	52,186	1,189	1,189	1,189	18,584
Child Restraints	54,440	1,111	1,111	1,111	19,258
Equipment Manufacturers	0	20	20	20	20
Manufacturers with under 500 vehicle sales per year	0	12	12	12	12
Total	938,963	18,041	18,041	18,041	331,030

ESTIMATED COSTS UNDER THE NPRM

	First year start-up	First year	Second year	Third year	Average for the first 3 years
Light Vehicles	$53,559,321	$885,653	$885,653	$885,653	$18,738,760
Medium/Heavy Vehicles	12,744,973	153,203	153,203	153,203	4,401,527
Buses	5,799,669	206,305	206,305	206,305	213,528
Trailers	1,819,016	81,145	81,145	81,145	687,484
Motorcycles	7,710,608	141,899	141,899	141,899	2,712,102

ESTIMATED COSTS UNDER THE NPRM—Continued

	First year start-up	First year	Second year	Third year	Average for the first 3 years
Tires	2,046,836	127,203	127,203	127,203	809,482
Child Restraints	3,177,531	122,781	122,781	122,781	1,181,958
Equipment Manufacturers	193	2,305	2,305	2,305	2,369
Manufacturers with under 500 vehicle sales per year	116	1,383	1,383	1,383	1,422
Total	86,858,263	1,721,877	1,721,877	1,721,877	30,674,631

As stated above, the final rule implementing the early warning reporting requirements may be issued before the end of the 60-day comment period for this collection of information. If this should occur, it would be helpful if the public comments in response to this notice reflect the requirements adopted in the final rule. All comments will be taken into account in NHTSA's Supporting Statement to OMB (that accompanies OMB Form 83–I) to request clearance for this collection of information.

Authority: 44 U.S.C. 3506(c); delegations of authority at 49 CFR 1.50 and 501.3(c).

Issued on: June 19, 2002.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 02–15904 Filed 6–24–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–12528; Notice 1]

Uniroyal Goodrich Tire Manufacturing, Receipt of Application for Decision of Inconsequential Noncompliance

Uniroyal Goodrich Tire Manufacturing (Uniroyal) has determined that approximately 3,023 P235/70R16 BFGoodrich Radial Long Trail do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New Pneumatic Tires.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Uniroyal has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

During the period of the 8th through the 10th and the 12th through the 14th weeks of 2002, the Ardmore, Oklahoma plant of Uniroyal GoodrichTire Manufacturing produced and cured a number of tires with erroneous marking.

FMVSS No. 109 (S4.3(d)) requires that each tire shall have permanently molded the generic name of each cord material used in the plies (both sidewall and tread area) of the tire. (S4.3(e)) requires that each tire shall have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area if different.

The noncompliance with S4.3(d) and (e) relates to the mold number. The tires were marked: Tread Plies: 2 Polyester + 2 Steel + 1 Nylon, instead of the required marking of: Tread Plies: 2 Polyester +2 Steel.

Uniroyal states that of the total (3,023) tires produced, 1,460 have been isolated and will be brought into compliance or scrapped. Uniroyal does not believe that this marking error will impact motor vehicle safety because the tires meet all applicable Federal Motor Vehicle Safety performance standards, conform to the original specifications, and the noncompliance is one solely of labeling.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: (30 days after Publication Date).

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: June 20, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–15998 Filed 6–24–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor Vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before July 25, 2002.

ADDRESS COMMENTS TO: Records Center, Research, and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (*See* Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at

the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at *http://dms.dot.gov.*

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Dated: Issued in Washington, DC, on June 18, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13021–N	RSPA–02–12446	Eastman Kodak Company, Rochester, NY.	49 CFR 171.11, 171.12, Part 172, Part 173 subpart B&E.	To authorize the transportation in commerce of machinery containing small quantities of Class 3 hazardous materials without hazard communication or required packaging. (modes 1, 2, 3, 4)
13023–N	RSPA–02–12448	Energy Conversion Devices, Inc., Troy, MI.	49 CFR 173.187	To authorize the one-time transportation in commerce of one overpack containing a specially designed device containing a Division 4.2 material that exceeds the maximum quantity limitations. (mode 1)
13024–N	RSPA–02–12449	Sybron Dental Specialties Inc., Orange, CA.	49 CFR 171.8, 172.101—App. A.	To authorize the transportation in commerce of specially designed packagings containing metallic mercury, Class 8 in package quantities exceeding one pound with the prescribed marking and labelling. (modes 1, 2, 3, 4)
13026–N	RSPA–02–12444	Sun Nuclear Corp, Melbourne, FL.	49 CFR 173.302 (a)(1), 173.34(d).	To authorize the transportation in commerce of Division 2.2 material in a non-DOT specification container. (modes 1, 2, 3, 4)
13027–N	RSPA–02–12451	Hernco Fabrication & Services, Midland, TX.	49 CFR 173.241, 173.242	To authorize the manufacture, mark, sale and use of a packaging consisting of manifolded non-DOT specification tanks for use in transporting certain Class 3 and Class 8 hazardous materials. (mode 1)
13028–N	RSPA–02–12452	Matheson Tri-Gas, East Rutherford, NJ.	49 CFR 173.301(j), 173.34(d)	To authorize the transportation in commerce of non-DOT specification cylinders for export containing various compressed gases without pressure relief devices. (modes 1, 3)
13029–N	RSPA–02–12445	Chromatography Research Supplies, Inc., Louisville, KY.	49 CFR 173.4	To authorize the transportation of a non-DOT specification inner receptable containing up to 2000 grams of a Division 2.2 material as a small quantity under Section 173.4. (modes 1, 4, 5)
13034–N		ATK-Ammunition Accessories, Inc., Lewiston, ID.	49 CFR 173.24(c), 173.54(a), 173.62.	To authorize the transportation in commerce of explosive components, Division 1.4S in specially designed packaging. (mode 1)

[FR Doc. 02–15908 Filed 6–24–02; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Program Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before July 10, 2002.

ADDRESSES: Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exempting is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington DC, on June 18, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
9791–M		Pressed Steel Tank Co., Milwaukee, WI (See Footnote 1)	9791
10985–M		Georgia-Pacific Corporation, Atlanta, GA, (See Footnote 2)	10985
11262–M		CAIRE Inc. (Division of CHART Industries), Burnsville, MN (See Footnote 3)	11262
11798–M		Air Product and Chemicals, Inc., Allentown, PA (See Footnote 4)	11798
12398–M	RSPA–00–6770	Praxair Inc., Danbury, CT (See Footnote 5)	12398

[1] To modify the exemption to authorize alternative service pressures lower than 3,500 psig for this non-DOT specification cylinder transporting certain Division 2.2 materials.

[2] To modify the exemption to authorize the transportation of a Division 5.1 material in DOT Specification tank cars.

[3] To modify the exemption to authorize a new non-DOT specification cylinder design for the transportation of Division 2.2 materials used in a liquid oxygen supply system.

[4] To modify the exemption to authorize the transportation of additional Division 2.2 materials in DOT Specification 3A or 3AA cylidners.

[5] To modify the exemption to authorize the transportation of Division 2.3 and an additional Division 2.2 material in DOT 3A and 3AA cylinders equipped with an alternative relief device and to add cargo vessel as an additional mode of transportation

[FR Doc. 02–15909 Filed 6–24–02; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

[Docket No. RSPA–98–4470]

Pipeline Safety: Meeting of the Gas Pipeline Safety Advisory Committee

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice; Meeting of Technical Pipeline Safety Standards Committee.

SUMMARY: A meeting of the Technical Pipeline Safety Standards Committee (TPSSC), the gas pipeline advisory committee, will be held on Thursday, July 18, 2002, from 9 a.m. to 6 p.m. in Washington, DC. The TPSSC will be advising the Office of Pipeline Safety (OPS) and voting on the proposed definition of High Consequence Areas (HCA) for Gas Transmission Operators which was published on January 9, 2002 (67 FR 1108). This definition will be referenced in an upcoming proposed rule on Pipeline Integrity Management in HCAs (Gas Transmission Pipeline Operators).

OPS will brief the TPSSC on integrity management concepts for gas pipelines and on the comments received in response to previous notices. In addition, OPS will present the draft cost-benefit analysis prepared for the upcoming proposed rule on integrity management programs for gas transmission pipelines. Because of the importance of this rule, OPS is providing the regulatory evaluation for peer review by the TPSSC before the proposed rule has been finalized.

ADDRESSES: Members of the public may attend the meetings at the Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. The exact location and room number for this meeting will be posted on the OPS web page approximately 15 days before the meeting date at *http://ops.dot.gov.*

An opportunity will be provided for the public to make short statements on the topics under discussion. Anyone wishing to make an oral statement should notify Juan Carlos Martinez, (202) 366–1933, not later than July 12, 2002, on the topic of the statement and the length of your presentation. The presiding officer at each meeting may deny any request to present an oral statement and may limit the time of any presentation.

You may submit written comments by mail or deliver to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You also may submit written comments to the docket electronically. To do so, log onto the following Internet Web address: *http://dms.dot.gov.* Click on ''Help & Information'' for instructions on how to file a document electronically. All written comments should reference docket number RSPA–98–4470. Anyone who would like confirmation of mailed comments must include a self-addressed stamped postcard.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Juan Carlos Martinez at (202) 366–1933.

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, OPS, (202) 366–4431 or Richard Huriaux, OPS, (202) 366–4565, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: The TPSSC is a statutorily mandated advisory committee that advises RSPA on proposed safety standards for gas pipelines. This advisory committee is constituted in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1). The committee consists of 15 members—five each representing government, industry, and the public. The TPSSC is tasked with determining reasonableness, cost-effectiveness, and practicability of proposed pipeline rules. In addition, Federal law (49 U.S.C. 60115(a)) requires that the TPSSC serve as peer reviewer committees for purposes of all Federal laws relating to risk assessment and peer review.

The TPSSC will be advising OPS and voting on the proposed definition of High Consequence Areas (HCA) for Gas Transmission Operators which was published on January 9, 2002 (67 FR 1108). This definition will be referenced in an upcoming proposed rule on Pipeline Integrity Management in HCAs (Gas Transmission Pipeline Operators).

In addition, OPS will brief the TPSSC on integrity management concepts for gas pipelines and on the comments

received in response to previous notices. OPS will provide copies and explain the draft cost-benefit analysis prepared for the upcoming proposed rule on integrity management programs for gas transmission pipelines. Because of the importance of this rule, OPS is submitting the regulatory evaluation for peer review by the TPSSC before the proposed rule has been finalized.

The upcoming proposed integrity management rule for gas transmission pipelines maintains the duty of a gas pipeline to comply with the current pipeline safety regulations (49 CFR part 192), but creates a protective umbrella of more comprehensive assessment, repair, prevention, and mitigative actions in those areas (high consequence areas) where a failure would do the greatest damage. This assessment process will produce better information about problems that may have been missed and creates checks and balances to assure that the best use is made of available information to correct newly found problems.

The proposed gas pipeline integrity management rule will be the culmination of a seven-year investigation of ways to improve the safety, security, and reliability of natural gas transmission lines in a cost-effective manner. It is based on risk assessment and specifically addresses the unique characteristics associated with gas pipelines, much in the same manner as the hazardous liquid integrity management rule addressed hazardous liquid pipeline characteristics.

This rulemaking also will address the trend of people moving closer to pipelines, which increase the threats of outside force damages to the pipelines, associated with construction.

Key concepts OPS is considering for the proposed gas integrity management rule include:

1. Expansion of the areas where added protection is required based on history of recent accidents in which a large impact area was experienced.
2. Improvement of protection though better inspection and management technology.
3. Establishment of stronger repair requirements.
4. Integration of various kinds of information to provide a clearer picture of threats.
5. Requirement to address each threat to integrity.

OPS has already sought and has received general comments from the public on gas transmission pipeline integrity management in high consequence areas. On June 27, 2001, RSPA issued a notice of request for comments on integrity management of gas transmission pipelines in high consequence areas (66 FR 34318). A copy of the notice and the comments are in Docket RSPA–00–7666, which is accessible on the Internet from the DOT Dockets Management System at *http://dms.dot.gov.* The notice sought comment on the following issues relating to establishment of integrity management programs by gas transmission pipelines:

1. Defining high consequence areas.
2. Identifying and evaluating threats to pipeline integrity.
3. Selecting the assessment technologies.
4. Determining time frames to conduct a baseline integrity assessment and to make repairs.
5. Identifying and implementing additional preventive and mitigative measures.
6. Evaluating and reassessing pipeline segments.
7. Monitoring the effectiveness of the management process.

Based in part on comments received and on meetings with representatives of the gas pipeline industry, research institutions, State pipeline safety agencies, and public interest groups, on January 9, 2002, RSPA issued a notice of proposed rulemaking to define areas of high consequence, i.e., areas where the impact of a gas transmission pipeline accident on people, property, or the environment could be unusually severe (67 FR 1108). This proposed rule is the first step in a two-step process to address integrity management programs for gas transmission pipelines. Although the proposed definition does not require any specific action by pipeline operators, it will be referenced in the upcoming proposed rule to require pipeline integrity management programs for gas transmission pipelines.

In addition to requirements for cost-benefit analysis of proposed pipeline safety standards, Federal law (49 U.S.C. 60115(c)) requires that OPS submit cost-benefit results and risk assessment information to one of two advisory committees established to support OPS on technical and policy issues. A key responsibility of the TPSSC is to provide peer review and evaluation of OPS' cost-benefit analyses for proposed gas pipeline standards. The TPSSC must: (1) Evaluate the merit of the data and methods used within the analyses, and (2) when appropriate, provide recommendations relating to the cost-benefit analyses.

OPS will consider the advice of the TPSSC and its peer review of the draft regulatory evaluation in crafting the proposed rule to require gas transmission pipelines to institute integrity management programs. The proposed rule will be submitted to the TPSSC for comment after it is published. Any comments by the TPSSC will be carefully considered before a final rule is issued.

Authority: 49 U.S.C. 60102, 60115.

Issued in Washington, DC.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–15997 Filed 6–24–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 18, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 25, 2002, to be assured of consideration.

Customs Service

OMB Number: 1515–0232.
Form Number: None.
Type of Review: Extension.
Title: Passenger and Crew Manifest for Passenger Flights.
Description: This collection is to comply with a new section of the Customs Regulations 122.49a which requires transmission of manifest information to Customs for passenger flights.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 200.
Estimated Burden Hours Per Respondent: 10 seconds.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,380 hours.
Clearance Officer: Tracey Denning, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, (202) 927–1429.
OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget,

Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–15922 Filed 6–24–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 19, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 25, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1079.

Form Number: IRS Form 9041.

Type of Review: Extension.

Title: Application for Electronic/Magnetic Media Filing of Business and Employee Benefit Plan Returns.

Description: Form 9041 is filed by estates and trusts, partnerships, and employers as an application to file their returns electronically or on magnetic media; and by software developers, service bureaus and electronic transmitters to develop auxiliary services.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 900 hours.

OMB Number: 1545–1648.

Publication Number: Publication 3319.

Type of Review: Extension.

Title: Low-Income Taxpayer Clinics-2002 Grant Application Package and Guidelines.

Description: Publication 3319 outlines requirements of the IRS Low-Income Taxpayer Clinics (LITC) program and provides instructions on how to apply for a LITC grant award.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 825.

Estimated Time For Program Sponsors: 60 hours.

Estimated Time For Student and Program Participants: 2 hours.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 6,000 hours.

OMB Number: 1545–1649.

Revenue Procedure Number: Revenue Procedure 99–21.

Type of Review: Extension.

Title: Disability Suspension.

Description: The information is needed to establish a claim that a taxpayer was financially disabled for purposes of section 6511(h) of the Internal Revenue Code (which was added by section 3203 of the Internal Revenue Service Restructuring and Reform Act of 1998). Under section 6511(h), the statute of limitations on claims for credit or refund is suspended for any period of an individual taxpayer's life during which the taxpayer is unable to manage his or her financial affairs because of a medically determinable mental or physical impairment, if the impairment can be expected to result in death, or has lasted (or can be expected to last) for a continuous period of not less than 12 months. Section 6511(h)(2)(A) requires that proof of the taxpayer's financial disability be furnished to the Internal Revenue Service.

Respondents: Individuals or households.

Estimated Number of Respondents: 48,200.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 24,100 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–15983 Filed 6–24–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–25–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–25–96 (TD 8824), Limitations on Net Operating Loss Carry-Forwards and Certain Built-In Losses and Credit Following an Ownership Change of a Consolidated Group.

DATES: Written comments should be received on or before August 26, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the Internet *(Larnice.Mack@irs.gov),* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses and Credits Following an Ownership Change of a Consolidated Group.

OMB Number: 1545–1218.

Regulation Project Number: CO–25–96.

Abstract: Section 1502 provides for the promulgation of regulations with respect to corporations that file consolidated income tax returns. Section 382 limits the amount of income that can be offset by loss carryovers and credits after an ownership change. These final regulations provide rules for applying section 382 to groups of corporations that file a consolidated return.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 12,054.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 662.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 14, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–16018 Filed 6–24–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8308

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8308, Report of a Sale or Exchange of Certain Partnership Interests.

DATES: Written comments should be received on or before August 26, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Larnice Mack, (202) 622–3179, or through the Internet *(Larnice.Mack@irs.gov.),* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Report of a Sale or Exchange of Certain Partnership Interests.

OMB Number: 1545–0941.

Form Number: 8308.

Abstract: Form 8308 is an information return that gives the IRS the names of the parties involved in an exchange of a partnership interest under Internal Revenue Code section 751(a). It is also used by the partnership as a statement to the transferor and transferee. It alerts the transferor that a portion of the gain on the sale of a partnership interest may be ordinary income.

Current Actions: There are no changes being made to Form 8308 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 200,000.

Estimated Time Per Respondent: 7 hrs., 18 minutes.

Estimated Total Annual Burden Hours: 1,460,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 14, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–16019 Filed 6–24–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–H

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–H, U.S. Income Tax Return for Homeowners Associations.

DATES: Written comments should be received on or before August 26, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Larnice Mack, (202) 622–3179, or through the Internet *(Larnice.Mack@irs.gov.),* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Homeowners Associations.

OMB Number: 1545–0127.

Form Number: 1120–H.

Abstract: Homeowners associations file Form 1120–H to report income, deductions, and credits. The form is also used to report the income tax liability of the homeowners association. The IRS uses Form 1120–H to determine if the income, deductions, and credits have been correctly computed. The form is also used for statistical purposes.

Current Actions: There are no changes being made to the Form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for profit organizations and individuals.

Estimated Number of Respondents: 112,311.

Estimated Time Per Respondent: 32 hrs., 24 minutes.

Estimated Total Annual Burden Hours: 3,638,877.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 14, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–16020 Filed 6–24–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8827

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8827, Credit for Prior Year Minimum Tax—Corporations.

DATES: Written comments should be received on or before August 26, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit for Prior Year Minimum Tax—Corporations.

OMB Number: 1545–1257.

Form Number: 8827.

Abstract: Internal Revenue Code Section 53(d), as revised, allows corporations a minimum tax credit based on the full amount of alternative minimum tax incurred in tax years beginning after 1989, or a carryforward for use in a future year. Form 8827 is used by corporations to compute the minimum tax credit, if any, for alternative minimum tax incurred in prior tax years and to compute any minimum tax credit carryforward.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 25,000.

Estimated Time Per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 25,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 17, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–16021 Filed 6–24–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3206

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3206, Information Statement by United Kingdom Withholding Agents Paying Dividends From U.S. Corporations to Residents of the United States and Certain Treaty Countries.

DATES: Written comments should be received on or before August 26, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internet (*http://Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Statement by United Kingdom Withholding Agents Paying Dividends From U.S. Corporations to Residents of the United States and Certain Treaty Countries.

OMB Number: 1545–0153.

Form Number: 3206.

Abstract: Form 3206 is used to report dividends paid by U.S. corporations through United Kingdom nominees to beneficial owners who are residents of countries other than the United Kingdom with which the U.S. has a tax treaty providing for reduced withholding rates on dividends. The data is used by IRS to determine whether the proper amount of income tax was withheld.

Current Actions: There are no changes being made to the Form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 3 hrs., 7 minutes.

Estimated Total Annual Burden Hours: 15,620.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 14, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–16022 Filed 6–24–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209831–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209831–96 (TD 8823), Consolidated Returns—Limitations on the Use of Certain Losses and Deductions.

DATES: Written comments should be received on or before August 26, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (Allan.M.Hopkins@irs.gov), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Consolidated Returns—Limitations on the Use of Certain Losses and Deductions.

OMB Number: 1545–1237.

Regulation Project Number: REG–209831–96.

Abstract: Section 1502 provides for the promulgation of regulations with respect to corporations that file consolidated income tax returns. These regulations amend the current regulations regarding the use of certain losses and deductions by such corporations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 19, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–16023 Filed 6–24–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2688

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2688, Application for Additional Extension of Time To File U.S. Individual Income Tax Return.

DATES: Written comments should be received on or before August 26, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Additional Extension of Time To File U.S. Individual Tax Return.

OMB Number: 1545–0066. Form Number: 2688.

Abstract: Internal Revenue Code section 6081 permits the Service to grant a reasonable extension of time to file a return. Form 2688 allows individuals who need additional time to file their U.S. income tax return to request an extension of time to file after the automatic 4 month extension period ends.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,453,000.

Estimated Time Per Respondent: 45 min.

Estimated Total Annual Burden Hours: 1,089,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 13, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–16024 Filed 6–24–02; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
June 25, 2002

Part II

Federal Retirement Thrift Investment Board

5 CFR Part 1600 et al.

Employee Elections to Contribute to the Thrift Savings Plan, Participants' Choice of Investment Funds, Vesting, Uniformed Services Accounts, Correction of Administrative Errors, Lost Earnings Attributable to Employing Agency Errors, Participant Statements, Calculation of Share Prices, Methods of Withdrawing Funds from the Thrift Savings Plan, Death Benefits, Domestic Relations Orders Affecting Thrift Savings Plan Accounts, Loans, Miscellaneous; Proposed Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1600, 1601, 1603, 1604, 1605, 1606, 1640, 1645, 1650, 1651, 1653, 1655, 1690

Employee Elections To Contribute to the Thrift Savings Plan, Participants' Choices of Investment Funds, Vesting, Uniformed Services Accounts, Correction of Administrative Errors, Lost Earnings Attributable to Employing Agency Errors, Participant Statements, Calculation of Share Prices, Methods of Withdrawing Funds From the Thrift Savings Plan, Death Benefits, Domestic Relations Orders Affecting Thrift Savings Plan Accounts, Loans, Miscellaneous

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) proposes to revise the Board's regulations to reflect the processes and terminology of the Thrift Savings Plan's new record keeping system, to codify several policy decisions related to implementation of this new system, and to add new methods of post-employment withdrawals. This rule will allow participants more options and greater flexibility with which to manage their TSP accounts.

DATES: Comments must be received on or before July 25, 2002.

ADDRESSES: Comments may be sent to: Elizabeth S. Woodruff, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The Board's FAX is (202) 942–1676.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest on (202) 942–1659, Thomas L. Gray on (202) 942–1644, or Merritt A. Willing on (202) 942–1666.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)). Sums in a TSP participant's account are held in trust for the participant.

In 1996, Congress amended FERSA by enacting the Thrift Savings Plan Act of 1996, Public Law 104–208, 110 Stat. 3009, which permitted the Executive Director to offer, among other things, new withdrawal options to TSP participants. In order to accommodate these new withdrawal options and to make a number of benefits arising from recent technological advances available to TSP participants, the Board redesigned its record keeping system. The new record keeping system is expected to be operational on September 16, 2002.

Thus, the Executive Director proposes to amend the TSP regulations that will be affected by the implementation of the new record keeping system. As explained below, the Executive Director also proposes to adopt uniform definitions, eliminate obsolete regulations, and reorganize various sections of the regulations to make them more easily understood.

Analysis of Part 1600

On December 2, 1987, the Executive Director published in the **Federal Register** (52 FR 45802) a final rule concerning the procedures for open seasons and election periods during which Federal employees could make elections to contribute to the TSP. The rule is codified at 5 CFR part 1600. The Executive Director substantially revised part 1600 in a final rule published on May 2, 2001 (66 FR 22088), and amended on April 11, 2002 (66 FR 17603); the proposed rule further amends the final rule.

The Executive Director proposes to remove all definitions generally applicable to the TSP from § 1600.1 and place them in § 1690.1.

The proposed amendment deletes obsolete information from §§ 1600.12 and 1600.13 and changes the dates for the TSP open seasons from May 15-July 31 to April 15-June 30 and from November 15-January 31 to October 15-December 31.

The proposed rule updates references to TSP forms in §§ 1600.11, 1600.14, and 1600.32 and makes current the reference to the percentage of basic pay employees may contribute to the TSP in § 1600.22. Finally, § 1600.32 explains that an eligible rollover distribution may be rolled over to the TSP by using a personal check, in additional to guaranteed funds.

Analysis of Part 1601

On July 17, 1995, and September 14, 1995, the Executive Director published in the **Federal Register** (60 FR 47836 and 60 FR 36630) final rules concerning participants' choices of investment funds. These rules are codified at 5 CFR part 1601. The Executive Director substantially revised part 1601 in a final rule published on May 2, 2001 (66 FR 22092); the proposed rule amends the final rule.

The Executive Director proposes to remove all definitions generally applicable to the TSP from § 1601.1 and to place them in § 1690.1; proposed § 1601.1 includes only definitions that are particularly relevant to participants' choices of investment funds, such as acknowledgment of risk and interfund transfer.

Subparts B and C are generally revised to include transfers and rollovers to the TSP from eligible employer plans or traditional individual retirement accounts (IRAs) as also covered by the terms of this subpart. Accordingly, references to future contributions and loan payments are replaced with references to future deposits, which include contributions, loan payments, transfers and rollovers to the TSP. Subparts B, C, and D are also revised by deleting obsolete provisions and by updating references to TSP forms.

Section 1601.22(c) is new and explains how the TSP will treat an ineffective interfund transfer.

Section 1601.32 is revised to reflect the timing and posting dates for contribution allocations and interfund transfer requests in a daily valued environment, as opposed to the current monthly valued environment.

Section 1601.34 is revised to explain additional reasons why a contribution allocation or interfund transfer on a Form TSP–50 or TSP–U–50 may be rejected.

Analysis of Part 1603

On June 23, 1997, the Executive Director published in the **Federal Register** final rules concerning the vesting of participants' accounts (62 FR 33968). These rules are codified at 5 CFR part 1603. The proposed rule amends the final rules.

The Executive Director proposes to remove all definitions generally applicable to the TSP from § 1603.1 and to place them in § 1690.1; proposed § 1603.1 is revised to include definitions that are particularly relevant to vesting, such as year of service. In addition, § 1603.2(a) is expanded to include the vesting rule applicable to members of the uniformed services.

Analysis of Part 1604

On October 4, 2001, the Executive Director published in the **Federal Register** final rules concerning uniformed services accounts (66 FR

50712). The rule is codified at 5 CFR part 1604. The proposed rule amends § 1603.3(a)(1) by explaining more fully the percentage limits on contributions from basic pay.

Analysis of Part 1605

On December 27, 1996, and May 1, 1998, the Executive Director published in the **Federal Register** final rules concerning the correction of administrative errors (61 FR 67472 and 63 FR 24380). The rule is codified at 5 CFR part 1605. The Executive Director substantially revised part 1605 in a final rule published on August 22, 2001 (66 FR 44277), and with a proposed rule published on May 17, 2002 (67 FR 35051). The proposed rule further amends the final rule.

The Executive Director proposes to remove all definitions generally applicable to the TSP from § 1605.1 and to place them in § 1690.1; proposed § 1605.1 includes definitions that are particularly relevant to error correction, such as Board error, breakage, and late contributions.

Proposed § 1605.2 introduces the concept of ''breakage,'' which replaces the concept of lost earnings for investments made after August 31, 2002. Currently, the TSP record keeper calculates lost earnings based upon the gains and losses of the appropriate investment fund from the pay date for which a contribution should have been made to the end of the month prior to the month during which the lost earnings record is processed. Under the proposed rule, if, on the date makeup or late contributions subject to breakage are posted to the participant's account by the TSP, the value of the number of shares of the investment fund in which the contributions should have been invested is greater than the value of those shares on the posting date, the TSP will charge the employing agency the difference and will post this amount to the participant's account using the participant's current contribution allocation. If the value is less, the TSP will use the excess funds submitted by the employing agency to offset TSP administrative expenses.

Section 1605.11 is amended to describe the situations in which breakage is applied to an account.

Section 1605.12 is amended to explain how negative adjustments will be processed in a daily valued environment.

Sections 1605.13, 1605.14, and 1605.15 are amended to delete references to lost earnings. A new paragraph (c) to § 1605.15 is added to incorporate the rules of current § 1606.8 regarding late payroll submissions.

Analysis of Part 1606

On January 7, 1991, the Executive Director published in the **Federal Register** (56 FR 606) interim rules concerning the payment of lost earnings attributable to employing agency errors to participants' TSP accounts. These rules are codified at 5 CFR part 1606. Under interim part 1606, lost earnings on contributions that were not made on time because of administrative errors are calculated based upon a dollar-valued system and monthly rates of return. The Board's new record keeping system is a share-based system, valued daily. Transactions will be posted to a participant's account based upon the share prices in effect on the date(s) that the transactions should have occurred. Application of share prices for dates earlier than the date a transaction is processed will replace the lost earnings process described in part 1606.

Thus, the proposed changes to part 1606 are relevant for only a limited period. As explained in proposed § 1606.2, a transition period from September 1, 2002, until March 31, 2003, is provided to enable employing agencies to submit lost earnings for contributions that were made before implementation of the daily valued TSP record keeping system. After this approximately 6-month period, all makeup and late contributions subject to breakage should be reported as described in part 1605; at that time, the use of lost earning records will be discontinued. Thus, part 1606, as revised, covers only payments posted to participants' account before September 1, 2002; all payments posted after August 31, 2002, are covered by part 1605.

Analysis of Part 1640

On June 24, 1997, the Executive Director published in the **Federal Register** (62 FR 34154) final rules concerning the periodic information the TSP furnishes to participants. These rules are codified at 5 CFR part 1640. The proposed rule amends the final rules.

The Executive Director proposes to remove all definitions generally applicable to the TSP from § 1640.1 and to place them in § 1690.1.

Proposed § 1640.2 reflects the Executive Director's decision to provide comprehensive written statements to participants concerning their accounts on a quarterly basis rather than twice yearly, the minimum frequency required by FERSA. The new comprehensive quarterly statements will incorporate the existing quarterly loan statements and no separate loan statements will be issued. The amendment also explains that Plan participants can obtain account balance information on a more frequent basis from the TSP Web site and the ThriftLine or can disable access to their account balance information on both the Web site and the ThriftLine.

Proposed §§ 1640.3 and 1640.4 set forth the information that the TSP will provide to participants regarding the status of their individual accounts during the reporting period. These changes reflect the additional information that will be available as a result of implementation of the TSP's new record keeping system, such as a participant's contribution allocation as of the end of the statement period.

Proposed § 1640.5 is unchanged.

Proposed § 1640.6 explains that a participant may elect to view his or her account statement by accessing the TSP Web site, rather than receiving an account statement by mail. If a participant chooses to receive his or her account statement from the TSP Web site, no account statement will be mailed. The section is also amended to describe more clearly a participant's obligation to provide the TSP with a current mailing address if the participant chooses to continue to receive an account statement by mail.

Analysis of Part 1645

On November 20, 1996, the Executive Director published final rules in the **Federal Register** (61 FR 58973) concerning the way in which earnings are allocated to participants' accounts in the TSP. These rules are codified at 5 CFR part 1645. The proposed rule amends the final rules.

The proposed rule amends the title of part 1645 from ''Allocation of Earnings'' to ''Calculation of Share Prices.'' This change is necessary because in the TSP's new record keeping system the process described in the current regulations is no longer relevant; an increase or decrease in the value (calculated daily) of a participant's interest in an investment fund will be reflected in the number and value of shares in that fund, rather than by a separate posting of monthly earnings to the account.

The Executive Director proposes to remove all definitions generally applicable to the TSP from § 1645.1 and place them in § 1690.1; proposed § 1645.1 contains definitions primarily relevant to the calculation of share prices, such as basis and forfeiture. The definitions of allocation, allocation date, month-end account balance, and valuation period are deleted because they are no longer applicable.

Proposed § 1645.2 provides that employer contributions, employee contributions, loan payments, and other transactions will be posted using the appropriate share price for the relevant investment fund.

The final monthly valued processing cycle in early September 2002, will determine account balances in the G Fund, F Fund, C Fund, S Fund, and I Fund, as of August 31, 2002. The account balance in each investment fund for each TSP participant will then be converted to shares. The initial share price for each of the investment funds will be $10.00 per share. Thus, a TSP account balance will be converted to shares by dividing the dollar-based account balance in each investment fund by $10.00. The number of shares in an account will be computed to four decimal places. Thereafter, following the close of business each business day, total net earnings (gross earnings minus administrative expenses (net of forfeitures) and investment management fees, plus any residual earnings from the prior business day) will be calculated for each investment fund. The total net earnings for each investment fund for each day will be divided by the number of shares in the fund at the opening of that business day. The result, truncated to two decimal places, is the daily change in share price from the prior business day.

Proposed §§ 1645.3 and 1645.4 also reflect the conversion to a share-based system.

Proposed § 1645.5 describes the method used to calculate the price of a share held in a TSP investment fund. Sections 1645.5(a) and (b) of the current regulations describe how to calculate the basis of an individual participant's account and of each investment fund in a monthly valued system, and thus are deleted because they are no longer relevant. Section 1645.5(c) of the current regulations is retained and redesignated as § 1645.6, and is amended to describe the calculation of the total fund basis for each TSP investment fund in the new share-based system.

Analysis of Part 1650

On September 18, 1997, the Executive Director published final rules in the **Federal Register** (62 FR 49112) concerning the way in which participants can withdraw their TSP accounts. These rules are codified at 5 CFR part 1650. The final rules were amended most recently on April 11, 2002 (66 FR 17603); the proposed rule further amends the final rules.

The Executive Director proposes to remove all definitions generally applicable to the TSP from § 1650.1 and place them in § 1690.1; proposed § 1650.1 retains definitions of terms primarily relating to withdrawals, such as in-service withdrawal and reimbursement. The definitions of monthly processing cycle and valuation date are deleted as obsolete.

In September 2002, the Executive Director will make available in combination the withdrawal options that were approved by Congress in the Thrift Savings Plan Act of 1996, Public Law 104–208, 110 Stat. 3009. Thus, proposed § 1650.2, concerning eligibility for a withdrawal, is amended to provide that a separated participant may elect to withdraw his or her account using a combination of withdrawal options. Currently, if a participant who is separated from Government employment wishes to withdraw funds from the TSP, the participant must withdraw his or her entire account in the form of a single payment, a series of monthly payments, or a life annuity purchased by the TSP. The proposed amendment would permit a separated participant to request a withdrawal consisting of a combination of the withdrawal options. To accommodate the new post-employment withdrawal process, the Board has redesigned Form TSP–70 (for civilian employees) and Form TSP–U–70 (for uniformed services), Request for a Full Withdrawal. Among other things, the revision allows a participant to request a TSP annuity and to designate a beneficiary for the annuity on one form. The proposed rule reflects the use of the revised forms. (Other forms have also been revised and new forms created for the uniformed services; those for uniformed services are designated with a –U–.)

Proposed § 1650.2, concerning eligibility for a TSP withdrawal, contains several changes. The reference in current § 1650.2(b)(1) to the cancellation of an automatic cashout has been deleted because accounts of less than $200 will be paid automatically and without prior notice to participants who are reported as separated. These automatic payments cannot be returned to the TSP. Proposed § 1650.2(d) provides that a separated participant who is later reemployed will not have the option to withdraw that portion of his or her account balance which is attributable to an earlier period of employment unless the participant meets the criteria for an age-based or financial hardship in-service withdrawal. Finally, existing § 1650.2(e), concerning spousal rights, is deleted because that information is contained in §§ 1650.60 and 1650.61.

Section 1650.3 is redrafted and reorganized but is substantively unchanged.

Section 1650.4 is new. It parallels a similar provision in the loan regulations (5 CFR 1655.18(d)) and provides that the Board will investigate allegations of fraud or forgery in a participant's withdrawal request. If the Board finds evidence to suggest that the participant misrepresented his or her marital status, misrepresented his or her spouse's address (for CSRS participants), or submitted a withdrawal form with a forged spousal signature (for FERS and uniformed services participants), the Board will refer the case to the Department of Justice for criminal prosecution and, in the case of a participant who is still employed, to the Inspector General or other appropriate authority in the participant's employing agency for administrative action.

Subpart B describes the types of withdrawals that are available to participants after separation from Government service. The subpart is substantially redrafted and reorganized. The Executive Director proposes to add a new § 1650.11 to explain that separated participants may make a full withdrawal using a combination of withdrawal methods and to add a *de minimis* forfeiture rule. Existing § 1650.10, concerning the right to withdraw in a single payment, is renumbered as § 1650.12 and is amended to add the option for a one-time partial withdrawal.

Current § 1650.11, concerning withdrawals in the form of monthly payments, is renumbered as § 1650.13 and is amended to eliminate the option of computing monthly payments based on a fixed term. The Executive Director also proposes to add an annual election period during which a participant can change the dollar amount of his or her monthly payments. A participant who is receiving monthly payments calculated based upon IRS life expectancy tables may change to a fixed dollar amount; however, a participant who is receiving monthly payments based on a fixed dollar amount may not change to monthly payments based on life expectancy.

Current § 1650.12, concerning annuities, is reorganized and renumbered as § 1650.14, but is substantively unchanged.

Current § 1650.13, concerning the transfer of a post-separation withdrawal to an eligible employer plan or traditional IRA, has been moved to subpart C, renumbered as § 1650.25, and renamed to make the information provided in subparts B and C more

consistent with that in subparts D and E.

Current § 1650.14, concerning deferred withdrawal elections, is deleted. Only immediate withdrawals will be available.

Current § 1650.15 is renumbered as § 1650.16, and is amended to delete an obsolete reference to withdrawals made before 1998. Proposed § 1650.15 is new. It explains the Board's policy with respect to inactive accounts. These accounts will be declared abandoned when the TSP's efforts to locate the participant have failed.

Current § 1650.16 is renumbered as § 1650.17, and the information has been expanded to explain more fully a participant's right to change or cancel a withdrawal election.

Subpart C contains the procedures for participants to make a post-employment withdrawal. Current § 1650.20 is renumbered as § 1650.21 and is amended to eliminate the 30-day waiting period after separation before a withdrawal will be paid. The TSP will process a valid withdrawal request upon receipt of separation information from the participant's employing agency if the participant certifies on the withdrawal form that he or she does not expect to be reemployed by the Federal Government within 31 days of the date of separation. The remainder of the section is unchanged.

Sections 1650.21 and 1650.22 currently provide that, upon receipt of a notice of separation, the TSP will automatically pay accounts of $3,500 or less directly to participants, unless the participant elects to leave the account in the TSP. The proposed rule renumbers those sections as 1650.22 and 1650.23, respectively. The proposed sections retain the cashout provision but apply it only to accounts that are less than $200, and eliminate the option to leave the money in the TSP. Current § 1650.22(c), regarding spousal rights, has been moved to subpart G. A new § 1650.24, describing how to apply for a withdrawal, and a new § 1650.25, explaining some of the tax consequences of a post-employment withdrawal, are added.

Subpart D describes the types of withdrawals that are available to participants while they are still in Government service. Current § 1650.30, concerning age-based withdrawals, is renumbered § 1650.31 and contains a new paragraph which provides that a participant who takes an age-based withdrawal is not eligible after separation to take a partial withdrawal from that account. A participant with both a civilian and uniformed services account can take a partial withdrawal from each account, provided that he or she has not taken an age-based in-service withdrawal from that account.

Current §§ 1650.31, 1650.32, and 1650.33 are renumbered as 1650.32, 1650.33, and 1650.34, respectively, but are substantively unchanged.

Subpart E contains the procedures for participants to make in-service withdrawals. Current §§ 1650.40, 1650.41, and 1650.42 are renumbered as 1650.41, 1650.42, and 1650.43, respectively. Proposed § 1650.42 contains a new paragraph (b) that explains that there is no limit to the number of hardship withdrawals a participant may make, except that a participant must wait six months before submitting another request. Proposed § 1650.43 contains tax information for in-service withdrawals that is reorganized to make it more consistent with the tax information provided in § 1650.25 for post-employment withdrawals.

Subpart G explains the rights of spouses of participants when a withdrawal is requested. Current § 1650.60, concerning spousal rights when a post-employment withdrawal is requested, is renumbered as 1650.61, and is amended to include the spousal rights of a uniformed services member. A requirement is also added that the spouse's signature be notarized any time a withdrawal is requested.

Current § 1650.61, concerning spousal rights when a participant changes a withdrawal election, is deleted because the elimination of deferred withdrawal elections makes these rules unnecessary.

Section 1650.62, concerning spousal rights when an in-service withdrawal is requested, is amended to require that the spouse's consent be notarized any time a withdrawal is requested.

Sections 1650.63 and 1650.64, concerning the conditions under which the Executive Director will grant a waiver of the spousal notice and consent requirements (including waiver of the required spousal annuity), are unchanged since the April 11, 2002, amendment.

Analysis of Part 1651

On June 13, 1997, and June 9, 1999, the Executive Director published in the **Federal Register** (62 FR 32429 and 64 FR 31052) final rules concerning the payment of a TSP account upon the death of a participant. These rules are codified at 5 CFR part 1651. The Executive Director revised part 1651 in a proposed rule published on May 17, 2002 (67 FR 35051). This proposed rule further amends the final rules.

Implementation of the TSP's new record keeping system will require the redesign of a number of forms and will make obsolete the Form TSP–11–B, Beneficiary Designation for a TSP Annuity, which is referenced in the current death benefit regulations at §§ 1651.2(b)(3), (b)(5) and (b)(6), 1651.3(a) and (d), 1651.4(c), and 1651.10(a) and (c). This proposed rule changes those references to reflect the use of revised forms. In addition, definitions generally applicable to the TSP are removed from § 1651.1 and placed in § 1690.1.

The proposed rule implements a new procedure for the payment of a TSP death benefit in cases where a participant has submitted a completed withdrawal or loan request to the TSP, but dies before disbursement of the withdrawal or loan. Currently, if the TSP learns that a separated participant has died after it received the participant's request to withdraw his or her account and before the payment is made, the TSP will not process the withdrawal. Instead, the TSP will pay the funds as a death benefit according to the order of precedence found at 5 U.S.C. 8424(d). If the participant has chosen to withdraw his or her account as a joint life annuity or an annuity with a refund or 10-year certain option, the TSP will pay the account to the joint annuitant or to the beneficiary or beneficiaries of the annuity as designated by the participant.

Under proposed § 1651.2(b)(1), if the TSP has received a request to withdraw an amount as a single payment, the TSP will disburse that amount to the participant (to become the property of his or her estate), even though he or she died before payment of the withdrawal. If the withdrawal request directs the TSP to transfer all or a portion of the single payment to a eligible employer plan or traditional IRA, the TSP will transfer that portion of the withdrawal to the designated plan or IRA. The Board has decided to adopt this practice because it gives effect to the participant's decision to remove the funds from his or her account, and thus to terminate the relationship with the TSP regarding these funds.

This procedural change will not affect how the TSP will pay, as a death benefit, the portion of a post-employment withdrawal that the participant elected to receive in the form of monthly payments (as opposed to a single payment). Thus, proposed § 1651.2(b)(2) provides that any amount remaining in the account when the TSP receives notice of the participant's death will be paid to the participant's beneficiaries according to the

beneficiary designation on file or under the statutory order of precedence.

This procedural change also has no substantive effect on proposed § 1651.2(b)(3), which describes how the TSP will distribute the portion of a TSP account identified by the participant for the purchase of a TSP annuity.

Proposed § 1651.2(c) applies the same new procedure to the payment of an in-service withdrawal request. Under the proposed rule, if a participant dies after completing an in-service withdrawal request, but before payment, the portion of the account elected for withdrawal will be paid in the same manner as a single payment post-employment withdrawal (*i.e.,* as a single payment to the deceased participant, to become the property of his or her estate).

The proposed change also affects cases where a participant dies after submitting a properly completed loan agreement (and acceptable documentation, if required); current Board regulations do not address this situation. Under proposed § 1651.2(d), the TSP will cancel a loan agreement if it receives notice of the participant's death before a loan check has been issued. If notice of the participant's death is received after a loan check has been issued but the check is not negotiated, the check can be returned to the TSP and the loan will be cancelled. In both cases, the loan amount will be included with the account balance to be distributed to the participant's beneficiaries according to the beneficiary designation on file or under the statutory order of precedence.

The proposed rule amends § 1651.14(f) to explain more fully the TSP's practice when a death benefit is payable to the trustee of a trust. The section is amended to state that payment will be made payable to the trust and mailed in care of the trustee.

The proposed rule amends § 1651.17 to permit beneficiaries to disclaim a portion of the death benefit; the TSP has decided to recognize partial disclaimers because they are acceptable in most states. Proposed § 1651.17(c) is new and provides that a disclaimer executed on behalf of a minor must be signed by the guardian of the minor.

Analysis of Part 1653

On March 13, 1995, and April 26, 1996, the Board published in the **Federal Register** (60 FR 13609 and 60 FR 18912) final rules concerning payment from a participant's TSP account pursuant to a retirement benefits court order or legal process. These rules are codified at 5 CFR part 1653. The proposed rule amends the final rules.

Subpart A of part 1653 details the TSP's procedures for reviewing retirement benefits court orders pursuant to 5 U.S.C. 8435(c)(1) and (2) and 8467. The proposed rule removes current § 1653.1, which describes the purpose of the subpart, as unnecessary.

Proposed § 1653.1 consolidates and defines terms of art that are currently explained throughout subpart A. Definitions that are generally applicable to the TSP have been moved to § 1690.1.

Current § 1653.2 describes those court orders that the TSP will honor (called ''qualifying retirement benefits court orders''). The section is generally reorganized and the process clarified. In addition, under current § 1653.2(b)(3)(iii), a court order can describe a payee's entitlement using a formula, as long as its variables are readily ascertainable from the face of the order or from Government records. However, the TSP does not have access to Government records in general; therefore, the proposed rule requires that the variables must be readily ascertainable from the order or from TSP records.

Also, under current § 1653.2(c)(1), the TSP will honor a court order relating to an account that contains non-vested money if the money will become vested within 90 days of receipt of the order. The 90-day period was chosen because, in the TSP's monthly-valued environment, it took approximately 90 days to process and pay a qualifying court order. After implementation of the new record keeping system, a court-ordered payment may be processed in as little as 31 days from receipt of the order; therefore, proposed § 1653.2(b)(2) reduces the relevant time period from 90 to 30 days.

Proposed § 1653.3(b) explains that the TSP cannot act on a retirement benefits court order if the order is incomplete, and describes the information that is necessary before the TSP will consider a court order to be complete. In § 1653.3(c), the terminology has been changed; currently the section states that a participant's TSP account will be frozen ''upon receipt'' of certain documents. The proposed section explains that a participant's account will be frozen as soon as practicable after the TSP receives a document. The substantive effect of the rule remains the same; the amendment is intended to bring to the reader's attention the fact that court order processing time might delay the freezing of a participant's account.

When the TSP receives a retirement benefits court order that purports to divide a participant's account, the parties are mailed a decision letter evaluating the court order and describing its effect on the participant's TSP account. If the court order requires a payment from the TSP, tax and payment information are currently sent to the appropriate parties in a separate mailing. Proposed § 1653.3(f) amends the current rule to provide that the TSP will provide tax and payment information with the TSP decision letter.

Proposed § 1653.3(j) explains how the TSP will process multiple retirement benefits court orders relating to the same TSP account and replaces current § 1653.3(l). Currently multiple court orders requiring payments to different payees are honored in the order of their effective dates. As it was originally written, FERSA did not express an order of precedence where multiple court orders awarded funds from the TSP to different payees. Therefore, TSP regulations were based on 5 U.S.C. 8435(d)(4), which applies where multiple court orders award survivor annuity interests to different spouses.

Subsequently, FERSA was amended by § 2(b) of the Child Abuse Accountability Act (CAAA) of 1994, Public Law 103–358, 108 Stat. 3420, 3421 (codified at 5 U.S.C. 8437(e) and 8467) to provide that conflicting retirement benefits court orders that award funds to different payees will be honored on a ''first-come, first-served basis.'' 5 U.S.C. 8467(a). The proposed rule conforms § 1653.3 to the CAAA.

Section 1653.4 is redrafted to reflect the daily valuation of TSP accounts. Proposed § 1653.4(e) codifies the TSP's practice of paying the stated dollar amount if a retirement benefits court order describes a payee's entitlement both as a fixed dollar amount and as a percentage or fraction of the participant's account, even if the percentage or fraction, when applied to the account balance, would yield a different result.

Proposed § 1653.4(f) describes a new TSP policy. Currently, if a retirement benefits court order requires the TSP to pay interest on an entitlement, the TSP uses the rates of return credited to the participant's account, unless the court order specifies another rate. Under the new policy, a court order can still specify the interest rate to be applied to a payee's entitlement by stating an annual percentage rate or a *per diem* dollar amount. If none is stated, the TSP will apply the rate of return for the G Fund. This policy will protect court order beneficiaries from market risk and preserve the value of their entitlements until they can be paid.

Finally, proposed § 1653.4 explains how earnings will be calculated after the

introduction of the new record keeping system. Because historical data concerning the monthly rates of return credited to a participant's account under the old system will not be converted to the new system, the TSP will be unable to apply those rates of return to a court-ordered payment after the new system is introduced. Therefore, payments processed after August 31, 2002, will be credited with earnings at the G Fund rate (unless the order awards earnings at an annual percentage rate or a *per diem* dollar amount), even if earnings are to commence before August 31, 2002.

The court order payment process is described at § 1653.5. Currently, the TSP generally disburses a court-ordered award within 60 to 90 days after approving the payment. Under the new process described at proposed § 1653.5(a), those disbursements may be made within 31 to 60 days after approval. Proposed § 1653.5(d) describes the general rule that a payment will be made *pro rata* from all TSP investment funds, contribution sources, and both tax-deferred and tax-exempt contributions; however, the amendment permits a court to specify tax-exempt balances that are to be paid from a uniformed services TSP account.

Retirement benefits court orders occasionally instruct the TSP to mail a court-ordered payment to a third party addressee, such as the payee's attorney. The TSP's rules for this type of payment are the subject of frequent misunderstanding; therefore, proposed § 1653.5(e) explains them in detail.

Proposed § 1653.5(g) is added to describe the order of precedence for the payment of multiple court order payees whose entitlements are created in the same court order, if the participant's account is insufficient to satisfy each payee's award. If the court order establishes an order of precedence, it will be honored; however, in the absence of an order of precedence, the TSP will first pay the spouse or former spouse, then children or agencies or persons acting on their behalf, and finally the attorney for the spouse or former spouse.

Subpart B of part 1653 details the TSP's procedures for reviewing legal processes that enforce a participant's obligation to make alimony or child support payments pursuant to 5 U.S.C. 8437(e). Several sections of subpart B have been renumbered in the proposed rule to make them correspond to the analogous sections of subpart A; in addition, duplicate references have been deleted and replaced with a reference to the corresponding rule in subpart A. The proposed rule removes current § 1653.20, which describes the purpose and scope of the subpart, as unnecessary. Current § 1653.22, which provides the mailing address for the TSP record keeper, is condensed into proposed § 1653.13(b).

The proposed rule adds a new § 1653.13(i) to subpart B to explain that the TSP will delay or cancel a payment required by a qualifying legal process only in response to a request by the legal authority that originally issued the legal process. Proposed § 1653.13(j) also changes the order of precedence for the processing of multiple qualifying legal processes requiring payment to different payees. Because retirement benefits court orders, legal processes, and child abuse court orders require similar payments, and because the latter two orders both satisfy judgments against TSP participants, the TSP will process all orders or processes similarly.

A new subpart C is added to part 1653 to explain that child abuse court orders are enforceable against the TSP and how the TSP will process them.

Analysis of Part 1655

On April 14 1997, and August 26, 1998, the Board published in the **Federal Register** (62 FR 18019 and 63 FR 45391, respectively) final rules concerning the statutory program under which a participant may have temporary access to his or her account while still employed. The rule is codified at 5 CFR part 1655. The Executive Director revised part 1655 in a proposed rule published on May 17, 2002 (67 FR 35051). This proposed rule further amends the final rules.

Proposed § 1655.1 removes all definitions that are generally applicable to the TSP and places them in § 1690.1. Definitions relevant solely to loans, such as amortization and loan repayment period, are retained in this section.

Sections 1655.2, 1655.4, 1655.5, and 1655.6 are reorganized so that they are more easily understandable, but are substantially unchanged. Proposed § 1655.5(b) is amended to make five years the maximum term for a general purpose loan and fifteen years the maximum term for a residential loan.

Section 1655.3 is amended to reflect the availability of information concerning the cost of a loan in the booklet *TSP Loan Program,* which is available on the Board's Web site.

Section 1655.7 is amended to delete references to monthly valuation.

Section 1655.8 is amended to provide that information concerning an outstanding loan will now be provided to participants in their quarterly participant statements and not in a separate statement.

Section 1655.9 is significantly revised as a result of the TSP's conversion from monthly to daily valuation; however, the basic concepts concerning the effect of a loan on an individual account remain the same. For example, loan disbursements will now be issued daily and funds will be removed from the account as soon as the loan is issued; however, loans will continue to be disbursed from employee contributions *pro rata* from each investment fund in which the contributions are invested and *pro rata* from tax-deferred and tax-exempt balances for uniformed services accounts.

Section 1655.10, describing the loan application process, is revised to reflect the fact that a participant may apply for a loan by submitting a paper application or by accessing the TSP Web site. The revision takes into account variations in the processes which depend upon the retirement coverage of the participant, the participant's marital status, and the type of loan requested.

Sections 1655.10, 1655.11, and 1655.12, which describe the processes for submission and approval of a loan application, submission of a loan agreement, and approval of the loan, are being combined and significantly reorganized to make the entire application and approval process more understandable. The amendment now covers these topics in §§ 1655.10, 1655.11, 1655.12, and 1655.13.

Section 1655.14 is amended to provide that a participant may choose to make a partial loan payment, in addition to those payments that are required to be made through payroll deduction, by submitting a personal check or guaranteed funds directly to the TSP record keeper. Thus, a participant will no longer be required to reamortize his or her loan if the TSP receives payments in an amount different from the agreed amount and, for this reason, current § 1655.15 is deleted in its entirety.

Current § 1655.13, concerning taxable distributions, is renumbered as § 1655.15. The proposed rule reflects amendments to conform to a daily valued system and the period of time after separation within which a loan must either be repaid in full or be declared a taxable distribution.

Section 1655.16 is amended to delete any reference to required reamortization. A participant may now reamortize at any time unless the loan is in default; however, the interest rate on the loan will remain the same. A loan will automatically be reamortized upon a participant's return from nonpay to pay status.

Section 1655.17 is amended to explain that a returned loan check will be treated as a repayment and that information concerning the amount outstanding on a loan is available from the Board's Web site, the ThriftLine, or the TSP record keeper.

Sections 1655.18, 1655.19, and 1655.20 are being clarified but their substance is unchanged.

Analysis of Part 1690

On June 16, 1997, the Board published a final rule in the **Federal Register** (62 FR 32473) which established a plan year for the TSP. The rule is codified at 5 CFR part 1690. On June 9, 1999, the Board published a final rule in the **Federal Register** (64 FR 31062) that amended Part 1690 by adding a rule explaining the TSP's requirements for a valid power of attorney. The proposed rule amends the final rule.

Current part 1690 is substantially reorganized. The proposed rule adds a Subpart A, which incorporates definitions of terms that are applicable throughout the Board's regulations. Subpart B incorporates the provisions of existing part 1690. The proposed rule adds § 1600.13 to subpart B to describe the documentation that is required for the TSP to process transactions for a participant who is legally unable to act on his or her own behalf because of physical or mental incapacity.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees and former employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Public Law 104–4, section 201, 109 Stat. 48, 64, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under § 202, 109 Stat. 48, 64–65, is not required.

List of Subjects

5 CFR Parts 1600, 1601, 1603, 1606, 1645, 1650, 1651, 1653, 1690

Employment benefit plans, Government employees, Pensions, Retirement

5 CFR Parts 1604, 1655

Employment benefit plans, Government employees, Military personnel, Pensions, Retirement.

5 CFR Part 1605

Administrative practice and procedure, Employment benefit plans, Government employees, Pensions, Retirement.

5 CFR Part 1640

Employment benefit plans, Government employees, Pensions, Reporting and recordkeeping requirements, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, the Executive Director of the Federal Retirement Thrift Investment Board proposes to amend 5 CFR chapter VI as follows:

PART 1600—EMPLOYEE ELECTIONS TO CONTRIBUTE TO THE THRIFT SAVINGS PLAN

1. The authority citation for part 1600 is revised to read as follows:

Authority: 5 U.S.C. 8351, 8432(b)(1)(A), 8432(j), 8474(b)(5) and (c)(1).

2. Section 1600.1 is revised to read as follows:

§ 1600.1 Definitions.

Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

3. Section 1600.11 is amended by revising paragraph (a) introductory text to read as follows:

§ 1600.11 Types of elections.

(a) *Contribution elections.* A contribution election must be made pursuant to § 1600.14 and includes the following types of elections:

* * * * *

4. Section 1600.12 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1600.12 Period for making contribution elections.

(a) *Participation upon initial appointment or reappointment.* An employee appointed, or reappointed following a separation from Government service, to a position covered by FERS or CSRS may make a TSP contribution election within 60 days after the effective date of the appointment.

(b) *Open season elections.* Any employee may make a contribution election during an open season. The next open season will be October 15, 2002, through December 31, 2002; thereafter, each year an open season will begin on April 15 and will end on June 30; a second open season will begin on October 15 and end on December 31. If the last day of an open season falls on a Saturday, Sunday, or legal holiday, the open season will be extended through the end of the next business day.

* * * * *

5. Section 1600.13 is amended by revising paragraph (a) to read as follows:

§ 1600.13 Effective dates of contribution elections.

(a) *Participation upon initial appointment or reappointment.* TSP contribution elections made pursuant to § 1600.12(a) will become effective no later than the first full pay period after the election is received by the employing agency or uniformed service.

* * * * *

6. Section 1600.14 is amended by revising paragraphs (a), (b) introductory text, and (b)(1) to read as follows:

§ 1600.14 Method of election.

(a) A participant must submit a contribution election to his or her employing agency. Employees may use either the paper TSP election form, *i.e.,* Form TSP–1 or Form TSP–U–1, or, if provided by their employing agency, electronic media to make an election. If an electronic medium is used, all relevant elements contained on the paper Form TSP–1 or Form TSP–U–1 must be included in the electronic medium.

(b) A contribution election must:

(1) Be completed in accordance with the instructions on Form TSP–1 or Form TSP–U–1, if a paper form is used;

* * * * *

7. Section 1600.22 is amended by revising paragraph (a) to read as follows:

§ 1600.22 Maximum contributions.

(a) *Percentage of basic pay.* (1) Subject to paragraphs (b) and (c) of this section, the maximum employee contribution from basic pay for a FERS participant for January through November 2002 is 12 percent per pay period. The maximum contribution will increase one percent in December of each year until December 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraphs (b) and (c) of this section.

(2) Subject to paragraphs (b) and (c) of this section, the maximum employee contribution from basic pay for a CSRS or uniformed services participant for January through November 2002 is 7 percent per pay period. The maximum contribution will increase one percent in December of each year until December 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraphs (b) and (c) of this section.

* * * * *

8. Section 1600.32 is amended by revising paragraph (b)(3) to read as follows:

§ 1600.32 Methods for transferring eligible rollover distribution to TSP.

* * * * *

(b) * * *

(3) The participant must submit the completed Form TSP–60 or TSP–U–60, together with a certified check, cashier's check, cashier's draft, money order, treasurer's check from a credit union, or personal check, made out to the ''Thrift Savings Plan,'' for the entire amount of the rollover. A participant may roll over the full amount of the distribution by making up, from his or her own funds, the amount that was withheld from the distribution for the payment of Federal taxes.

* * * * *

PART 1601—PARTICIPANTS' CHOICES OF INVESTMENT FUNDS

9. The authority citation for part 1601 continues to read as follows:

Authority: 5 U.S.C. 8351, 8438, 8474(b)(5) and (c)(1).

Subpart A—General

10. Section 1601.1 is revised to read as follows:

§ 1601.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

Acknowledgment of risk means an acknowledgment that any investment in the F Fund, C Fund, S Fund, or I Fund is made at the participant's risk, that the participant is not protected by the United States Government or the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment.

11. Subparts B and C are revised to read as follows:

Subpart B—Investing Future Deposits

Sec.

Subpart C—Redistributing Participants' Existing Account Balances

Subpart B—Investing Future Deposits

§ 1601.11 Applicability

This subpart applies only to the investment of future deposits to the TSP's investment funds, including contributions, loan payments, and transfers or rollovers from eligible employer plans and traditional IRAs; it does not apply to redistributing participants' existing account balances among the investment funds, which is covered in subpart C of this part.

§ 1601.12 Investing future deposits in the TSP investment funds.

(a) Future deposits in the TSP, including contributions, loan payments, and transfers or rollovers from eligible employer plans and traditional IRAs, will be allocated among the investment funds based on the most recent contribution allocation made by the participant pursuant to § 1601.13.

(b) *Investment fund availability.* All participants may elect to invest all or any portion of their deposits in any of the TSP's five investment funds.

§ 1601.13 Elections.

(a) *Contribution allocation.* Each participant may indicate his or her choice of investment funds for the allocation of future deposits by using the TSP Web site or the ThriftLine, or by completing Form TSP–50 or Form TSP–U–50, Investment Allocation. The following rules apply to contribution allocations:

(1) Contribution allocations must be made in one percent increments. The sum of the percentages elected for all of the investment funds must equal 100%;

(2) The percentage elected by a participant for investment of future deposits in an investment fund will be applied to all sources of contributions and transfers from eligible employer plans and traditional IRAs. A participant may not make different percentage elections for different sources of contributions;

(3) A participant who elects for the first time to invest in the F Fund, C Fund, S Fund, or I fund must execute an acknowledgment of risk in accordance with § 1601.33. In addition, a participant who, before September 2002, has only invested in the F Fund or C Fund, must execute an acknowledgment of risk in accordance with § 1601.33 before making any new election to invest in the F Fund, C Fund, S Fund, or I Fund;

(4) All deposits made on behalf of a participant who does not have a contribution allocation in effect will be invested in the G Fund; and

(5) Once a contribution allocation becomes effective, it remains in effect until it is superseded by a subsequent contribution allocation. If a separated participant is rehired and had not withdrawn his or her entire TSP account, the participant's last contribution allocation before separation from service will be given effect until a new allocation is made.

(b) *Effect of rejection of contribution allocation.* If a contribution allocation on a Form TSP–50 or Form TSP–U–50 is found to be ineffective pursuant to § 1601.34, the attempted allocation will have no effect. The TSP will provide the participant with a written statement of the reason the transaction was rejected.

(c) *Contribution elections.* A participant may designate the amount of employee contributions he or she wishes to make to the TSP or may stop contributions only in accordance with 5 CFR part 1600.

Subpart C—Redistributing Participants' Existing Account Balances

§ 1601.21 Applicability.

This subpart applies only to redistributing participants' existing account balances among the TSP's investment funds; it does not apply to the investment of future deposits, which is covered in subpart B of this part.

§ 1601.22 Methods of requesting an interfund transfer.

(a) Participants may make an interfund transfer using the TSP Web site or the ThriftLine, or by completing a Form TSP–50 or Form TSP–U–50, Investment Allocation. The following rules apply to an interfund transfer request:

(1) Interfund transfer requests must be made in one percent increments. The sum of the percentages elected for all of the investment funds must equal 100%.

(2) The percentages elected by the participant will be applied to the balances in each source of contributions and to both tax-deferred and tax-exempt balances on the effective date of the interfund transfer.

(3) Any participant who elects to invest in the F Fund, C Fund, S Fund, or I Fund for the first time must execute an acknowledgment of risk in accordance with § 1601.33. In addition,

a participant who, before September 2002, has only invested in the F Fund or C Fund, must execute an acknowledgment of risk in accordance with § 1601.33 before making any new election to invest in the F Fund, C Fund, S Fund, or I Fund.

(b) An interfund transfer request has no effect on deposits made after the effective date of the interfund transfer request; subsequent deposits will continue to be allocated among the investment funds in accordance with the participant's contribution allocation made under subpart B of this part.

(c) If an interfund transfer on a Form TSP–50 or Form TSP–U–50 is found to be ineffective pursuant to § 1601.34, the purported transfer will have no effect. The TSP will provide the participant with a written statement of the reason the form was rejected.

Subpart D—Contribution Allocations and Interfund Transfer Requests

12. Section 1601.32 is revised to read as follows:

§ 1601.32 Timing and posting dates.

(a) *Posting dates.* (1) A contribution allocation or an interfund transfer entered into the TSP record keeping system by a participant who uses the TSP Web site or the ThriftLine, or by a TSPSO participant service representative at the participant's request, at or before 11 a.m. central time of any business day, will ordinarily be posted that business day. A contribution allocation or an interfund transfer request made on the TSP Web site, the ThriftLine, or with a TSPSO participant service representative, after 11 a.m. central time of any business day will ordinarily be posted on the next business day.

(2) A contribution allocation or an interfund transfer request made on the TSP Web site or the ThriftLine on a non-business day will ordinarily be posted on the following business day.

(3) A contribution allocation or an interfund transfer request made on Form TSP–50 or Form TSP–U–50 will ordinarily be posted under the rules in paragraph (a)(1) of this section, based on when the form is entered into the TSP system by the TSP record keeper. Such forms are ordinarily entered into the system within 24 hours of their receipt by the TSP record keeper.

(4) In most cases, the share price(s) applied to an interfund transfer request is the value of the shares on the date the relevant transaction is posted. In some circumstances, such as error correction, the share price(s) for an earlier date will be used.

(b) *Limit.* There is no limit on the number of contribution allocations or interfund transfer requests that may be made by a participant.

(c) *Multiple contribution allocations or interfund transfer requests.* (1) If two or more contribution allocations or two or more interfund transfer requests are received for a participant and would be posted on the same day, the following rules will apply:

(i) If one or more of the contribution allocations or interfund transfer requests are submitted through the Web site or the ThriftLine and one or more are made on Form TSP–50 or Form TSP–U–50 and would be posted on the same day, only the latest contribution allocation or interfund transfer request made through the Web site or the ThriftLine will be posted.

(ii) If one or more of the contribution allocations or interfund transfer requests are made through the TSP Web site or the ThriftLine, only the contribution allocation or interfund transfer request entered at the latest time will be posted.

(iii) If the contribution allocations or interfund transfer requests are submitted using Form TSP–50 or Form TSP–U–50, the forms will be posted in the order they are received by the TSP record keeper.

(2) For purposes of determining the date and time of a contribution allocation or an interfund transfer request in applying the rules of this paragraph (c), the following rules apply:

(i) The date and time of a contribution allocation or interfund transfer request made through the TSP Web site or the ThriftLine is the date and time the participant confirms the percentages.

(ii) Central time is used for determining the date and time on which a transaction is entered and confirmed through the TSP Web site or the ThriftLine.

(d) *Cancellation of contribution allocation or interfund transfer request.* (1) A contribution allocation or an interfund transfer request may be cancelled through the TSP Web site, the ThriftLine, through written correspondence, or by contacting a participant service representative.

(2) A contribution allocation or an interfund transfer request may be cancelled by entering the cancellation on the TSP Web site or the ThriftLine only up to the deadline, described in paragraph (a) of this section, that is applicable to the original request. If a change or cancellation is received after the deadline, the original request will be processed as scheduled. Any subsequent request will then be processed in turn.

(3) A participant may also cancel a contribution allocation or an interfund transfer request by submitting a letter to the TSP record keeper that requests cancellation and meets the following requirements:

(i) The cancellation letter must be signed and dated and must contain the participant's name, Social Security number, and date of birth.

(ii) The cancellation for the pending transaction must be received before the relevant transaction is processed.

(iii) The letter must state unambiguously the specific contribution allocation or interfund transfer request it seeks to cancel.

(A) If it does not identify the specific contribution allocation or interfund transfer request it seeks to cancel, the written cancellation will apply to any pending contribution allocation or interfund transfer request with a date (as determined under this paragraph (c)(3)) before the date of the cancellation letter.

(B) If the date of a cancellation letter is the same as the date of a pending contribution allocation or an interfund transfer request and the request was made on Form TSP–50 or Form TSP–U–50, the form will be cancelled.

(C) If the request was made on the TSP Web site or ThriftLine, it will only be cancelled if the written cancellation specifies the date of the TSP Web site or ThriftLine request to be cancelled.

(D) If there is no contribution allocation or interfund transfer pending when the written cancellation is processed by the TSP record keeper, the cancellation will have no effect. Cancellation letters will not be held until a contribution allocation or interfund transfer request is received.

13. Section 1601.34 is revised to read as follows:

§ 1601.34 Effectiveness of Form TSP–50 or Form TSP–U–50.

A Form TSP–50 or Form TSP–U–50 will not be effective if:

(a) It is not signed and dated or contains a future date, a date more than one year before the TSP's receipt of the form, or an invalid date.

(b) It is missing a Social Security number, date of birth, or the participant's first or last name.

(c) The participant's date of birth does not match the information in the TSP records.

(d) The contribution allocation or interfund transfer percentages do not total 100%, or the percentages are not entered as whole numbers. An error under this paragraph (d) will not invalidate the entire form, but only that transaction for which the error occurred.

(e) Such other reasons as may be determined by the Executive Director.

PART 1603—VESTING

14. The authority citation for part 1603 continues to read as follows:

Authority: 5 U.S.C. 8432(g), 8432b(h)(1), 8474(b)(5) and (c)(1).

15. Section 1603.1 is revised to read as follows:

§ 1603.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

Service means:

(1) Any non-military service that is creditable under either 5 U.S.C. chapter 83, subchapter III, or 5 U.S.C. 8411, provided, however, that such service is to be determined without regard to any time limitations, any deposit or redeposit requirements contained in those statutory provisions after performing the service involved, or any requirement that the individual give written notice of that individual's desire to become subject to the retirement system established by 5 U.S.C. chapters 83 or 84; or

(2) Any military service creditable under the provisions of 5 U.S.C. 8432b(h)(1) and the regulations at 5 CFR part 1620, subpart H.

Uniformed services means the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration.

Vested means those amounts in an individual account which are nonforfeitable.

Year of service means one full calendar year of service.

16. Section 1603.2 is amended by revising paragraph (a) to read as follows:

§ 1603.2 Basic vesting rules.

(a) All amounts in a CSRS employee's or uniformed service member's individual account are immediately vested.

* * * * *

PART 1604—UNIFORMED SERVICES ACCOUNTS

17. The authority citation for part 1604 is revised to read as follows:

Authority: 5 U.S.C. 8440e, 8474(b)(5) and (c)(1).

18. Section 1604.4(a)(1) is revised to read as follows:

§ 1604.4 Contributions.

(a) * * *

(1) *Temporary percentage limitations.* Subject to paragraph (a)(2) of this section, the maximum TSP regular employee contribution (including combat zone contributions) a service member may make for January through November 2002 is 7 percent of basic pay per pay period. The maximum contribution will increase one percent in December of each year until December 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraph (a)(2) of this section.

* * * * *

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

19. The authority citation for part 1605 is revised to read as follows:

Authority: 5 U.S.C. 8351, 8432a, and 8474(b)(5) and (c)(1).

Subpart A—General

20. Section 1605.1 is revised to read as follows:

§ 1605.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

''As of'' date means the date on which a TSP contribution or other transaction entailing acquisition of investment fund shares should have taken place. Employing agencies use this date on payment records to report makeup or late contributions.

Attributable pay date ordinarily means the pay date of an erroneous contribution for which a negative adjustment is being made or, in the case of the uniformed services, the pay date of a contribution that is being recharacterized from tax-deferred to tax-exempt, or vice versa. However, if the erroneous contribution was a makeup or late contribution, the attributable pay date is the ''as of'' date of the erroneous makeup or late contribution.

Board error means any act or omission by the Board which is not in accordance with applicable statutes, regulations, or the Board's administrative procedures that are made available to employing agencies and/or TSP participants.

Breakage means the loss incurred or the gain realized on makeup or late contributions. It is the difference between the value of the shares of the applicable investment fund(s) that would have been purchased had the contribution been made on the ''as of'' date and the value of the shares of the same investment fund(s) on the date the contribution is posted to the account.

Dollar value as of August 31, 2002, applies to contributions that are subject to breakage with an ''as of'' date on or before August 31, 2002, or a negative adjustment with an attributable pay date on or before August 31, 2002, and means the amount of a contribution or negative adjustment plus earnings on that amount from the ''as of'' date or attributable pay date through August 31, 2002, computed pursuant to TSP procedures for allocating earnings that were in effect for the relevant time period and based upon the historic monthly rates of return for the applicable investment fund(s), without regard to any interfund transfer occurring between the ''as of'' date or attributable pay date and August 31, 2002.

Employing agency error means any act or omission by an employing agency which is not in accordance with all applicable statutes, regulations, or administrative procedures, including internal procedures promulgated by the employing agency and TSP procedures provided to employing agencies by the Board.

FERCCA correction means the correction of a retirement coverage error pursuant to the Federal Erroneous Retirement Coverage Corrections Act, title II, Public Law 106–265, 114 Stat. 770.

Late contributions means:

(1) Employee contributions that were timely deducted from a participant's basic pay but were not timely reported to the TSP record keeper for investment;

(2) Employee contributions that were timely reported to the TSP but were not timely posted to the participant's account by the TSP because the payment record on which they were submitted contained errors;

(3) Agency matching contributions attributable to employee contributions referred to in paragraph (1) or (2) of this definition; and

(4) Delayed agency automatic (1%) contributions.

Makeup contributions are employee contributions that should have been deducted from a participant's basic pay or employer contributions that should have been charged to an employing agency on an earlier date, but were not deducted or charged and, consequently, are being deducted or charged currently.

Negative adjustment means the removal of money from a participant's TSP account by an employing agency.

Negative adjustment record means a data record submitted by an employing agency to remove from a participant's TSP account money which the agency had previously submitted in error.

Pay date means the date established by an employing agency for payment of its employees or service members.

Payment record means a data record submitted by an employing agency to report contributions or loan payments to a participant's TSP account.

Record keeper error means any act or omission by the TSP record keeper that is not in accordance with applicable statutes, regulations, or administrative procedures made available to employing agencies and/or TSP participants.

21. A new § 1605.2 is added to Subpart A to read as follows:

§ 1605.2 Calculating, posting, and charging breakage.

(a) Breakage will be calculated on makeup agency contributions that are reported on current payment records, and on makeup and late contributions from all sources that are reported on late payment records.

(b) Breakage will be calculated and posted as follows:

(1) The participant's contribution allocation for the ''as of'' date on the payment record will be determined as follows:

(i) If the ''as of'' date is after April 30, 2001, the TSP will use the contribution allocation on file for the ''as of'' date.

(ii) If the ''as of'' date is before May 1, 2001, the TSP will derive a contribution allocation from the investment of a contribution made for that date. If no contribution was made for the ''as of'' date, the TSP will derive a contribution allocation from the investment of the last contribution made within the 45 days preceding that date. If no contribution was made within this time, the derived contribution allocation will be 100% G Fund.

(2) The TSP will determine the number of shares of the applicable investment fund(s) that would have been purchased had the contribution been made on time by dividing the amount of the contribution that would have been made to each investment fund (using the contribution allocation determined in paragraph (b)(1) of this section) by the applicable share price. If the ''as of'' date is after August 31, 2002, the TSP will determine the number of shares of each investment fund that would have been purchased on the ''as of'' date. If the ''as of'' date is before September 1, 2002, the TSP will determine the number of shares that the dollar value of the contribution as of August 31, 2002, would have purchased on August 31, 2002.

(3) For each investment fund, the TSP will determine the value of the number of shares that would have been purchased, as determined in paragraph (b)(2) of this section, on the date the contributions are posted to the account.

(4) The TSP will subtract the amount of the contributions that would have been made to each investment fund on the ''as of'' date from the value of the shares on the posting date, as determined in paragraph (b)(3) of this section.

(5) The TSP will post the amount determined in paragraph (b)(4) of this section (which may be positive or negative) and the associated contribution to the participant's account in accordance with the participant's contribution allocation in effect on the posting date using the applicable share prices. If the participant had no contribution allocation in effect on the posting date, the contributions and breakage will be allocated to the G Fund.

(6) If the TSP posts multiple employer makeup contributions with different ''as of'' dates for a participant on the same business day, the amount of breakage charged to the employing agency or forfeited to the TSP will be determined separately for each contribution, without netting any gains or losses attributable to different ''as of'' dates. If the TSP posts multiple employer makeup contributions with the same ''as of'' date for a participant on the same business day, gains and losses from different sources of contributions or different investment funds will not be netted against each other. Instead, breakage will be determined separately for each investment fund by source of contribution.

(7) Interfund transfers occurring between the ''as of'' date of the makeup contribution and the date the contribution is posted will not be considered in correcting an employing agency error.

(c) If the amount determined in paragraph (b)(4) of this section is positive (*i.e.,* the value of the shares that would have been purchased is greater on the posting date than on the ''as of'' date), the employing agency will be charged the difference between the contribution and the amount posted to the account. If the amount determined in paragraph (b)(4) of this section is negative (i.e., the value of the shares that would have been purchased is less than on the posting date), the difference between the contribution and the amount posted to the account will be forfeited to the TSP and used to offset administrative expenses.

Subpart B—Employing Agency Errors

22. Section 1605.11 is revised to read as follows:

§ 1605.11 Makeup of missed or insufficient contributions.

(a) *Applicability.* This section applies whenever, as the result of an employing agency error, a participant does not receive all of the TSP contributions to which he or she is entitled. This includes situations in which an employing agency error prevents a participant from making an election to contribute to his or her TSP account, in which an employing agency fails to implement a contribution election properly submitted by a participant, in which an employing agency fails to make agency automatic (1%) contributions or agency matching contributions that it is required to make, or in which an employing agency otherwise erroneously contributes less to the TSP for a participant's account than it should have. The corrections required by this section must be made in accordance with this part and the procedures provided to employing agencies by the Board in bulletins or other guidance. It is the responsibility of the employing agency to determine whether it has made an error that entitles a participant to correction under this section.

(b) *Employer makeup contributions.* If an employing agency has failed to make agency automatic (1%) contributions that are required under 5 U.S.C. 8432(c)(1)(A), agency matching contributions that are required under section 8432(c)(2), conversion contributions that are required under section 8432(c)(3), or matching contributions that are authorized under 37 U.S.C. 211(d), the following rules apply:

(1) The employing agency must promptly submit all missed contributions to the TSP record keeper on behalf of the affected participant. For each pay date involved, the employing agency must submit a separate payment record showing the ''as of'' date for the contributions.

(2) The TSP will calculate the breakage due to the participant and post both the contributions and the associated breakage to the account in accordance with § 1605.2.

(c) *Employee makeup contributions.* Within 30 days of receiving information from his or her employing agency indicating that the employing agency acknowledges that an error has occurred which has caused a lesser amount of employee contributions to be made to the participant's account than should have been made, a participant may elect to establish a schedule to make up the deficient contributions through future payroll deductions. Employee makeup contributions can be made in addition

to any TSP contributions that the participant is otherwise entitled to make. The following rules apply to employee makeup contributions:

(1) The schedule of makeup contributions elected by the participant must establish the dollar amount of the contributions to be made each pay period over the duration of the schedule. The contribution amount per pay period may vary during the course of the schedule, but the amounts to be contributed must be established when the schedule is created. The length of the schedule may not exceed four times the number of pay periods over which the error occurred.

(2) At its discretion, an employing agency may set a ceiling on the length of a schedule of employee makeup contributions which is less than four times the number of pay periods over which the error occurred. The ceiling may not, however, be less than twice the number of pay periods over which the error occurred.

(3) The employing agency must implement the participant's schedule of makeup contributions as soon as practicable.

(4) For each pay date involved, the employing agency must submit a separate payment record showing the ''as of'' date for which the employee contribution should have been made. An employee is not eligible to make up contributions with an ''as of'' date occurring during a period of six months following a financial hardship in-service withdrawal, as provided in 5 CFR 1650.33. An employee may make up contributions during a period of ineligibility due to a hardship withdrawal as long as the ''as of'' date is for an earlier period.

(5) Employee makeup contributions will be invested in accordance with the participant's current contribution allocation. The number of shares of each investment fund that will be purchased will be determined by dividing the amount of the makeup contributions by the share price of the applicable investment fund(s) on the posting date.

(6) Employee makeup contributions will not be considered in applying the maximum amount per pay period that a participant is permitted to contribute to the TSP, but will be included for purposes of applying the annual limit contained in section 402(g) of the Internal Revenue Code (26 U.S.C. 402(g)(1)). For purposes of applying the annual limit of section 402(g), employee makeup contributions will be applied against the limit for the year of the ''as of'' date.

(i) Before establishing a schedule of employee makeup contributions, the employing agency must review any schedule proposed by the affected participant, as well as the participant's prior TSP contributions, if any, to determine whether the makeup contributions, when combined with prior contributions for the same year, would exceed the annual contribution limit(s) contained in section 402(g) for the year(s) with respect to which the contributions are being made.

(ii) The employing agency must not permit contributions that, when combined with prior contributions, would exceed the applicable annual contribution limit contained in section 402(g).

(7) A schedule of employee makeup contributions may be suspended if a participant has insufficient net pay to permit the makeup contributions. If this happens, the period of suspension should not be counted against the maximum number of pay periods to which the participant is entitled in order to complete the schedule of makeup contributions.

(8) A participant may elect to terminate a schedule of employee makeup contributions at any time, but a termination is irrevocable. A participant may not elect to make partial payments under the schedule. If a participant separates from Government service, the participant may elect to accelerate the payment schedule by a lump sum contribution from his or her final paycheck.

(9) At the same time that a participant makes up missed employee contributions, the employing agency must make any agency matching contributions that would have been made had the error not occurred. Agency matching contributions must be submitted pursuant to the rules set forth in paragraph (b) of this section. A participant may not receive matching contributions associated with any employee contributions that are not actually made up. If employee makeup contributions are suspended in accordance with paragraph (c)(7) of this section, the payment of agency matching contributions must also be suspended.

(10) If a participant transfers to an employing agency different from the one by which the participant was employed at the time of the missed contributions, it remains the responsibility of the former employing agency to determine whether employing agency error was responsible for the missed contributions. If it is determined that such an error has occurred, the current agency must take any necessary steps to correct the error. The current agency may seek reimbursement from the former agency of any amount that would have been paid by the former agency had the error not occurred.

(11) Employee makeup contributions may be made only by payroll deduction from basic pay or, for uniformed services participants, from basic pay, incentive pay, or special pay, including bonuses. Contributions by check, money order, cash, or other form of payment directly from the participant to the TSP, or from the participant to the employing agency for deposit to the TSP, are not permitted.

23. Section 1605.12 is amended by revising paragraphs (b)(1),(c), (f)(1), and (f)(2) to read as follows:

§ 1605.12 Removal of erroneous contributions.

* * * * *

(b) * * *

(1) To remove money from a participant's account, the employing agency must submit, for each attributable pay date involved, a negative adjustment record stating the amount of the erroneous contribution being removed, the attributable pay date with respect to which the erroneous contribution was made, and the source(s) of the contributions.

* * * * *

(c) *Processing negative adjustments.* A negative adjustment will be allocated among investment funds in the same manner as the original contribution. The current value of the contributions that the agency seeks to remove by the negative adjustment will be calculated in accordance with the following rules:

(1) If the attributable pay date for the erroneous contribution is on or before August 31, 2002, the TSP will:

(i) For each source of contributions, determine the dollar value as of August 31, 2002 (as defined in § 1605.1(b)), of the amount of the contributions to be removed from each investment fund;

(ii) For each source of contributions and each investment fund, convert the dollar value determined in paragraph (c)(1)(i) of this section to shares by dividing by $10.00; and

(iii) Multiply the price per share for the date the adjustment is posted by the number of shares calculated in paragraph (c)(1)(ii) of this section.

(2) If the attributable pay date of the negative adjustment is after August 31, 2002, the TSP will:

(i) For each source and type of contributions and for each investment fund, determine the number of shares that represents the amount of the contribution to be removed from the investment fund based upon the share price on the attributable pay date; and

(ii) Multiply the price per share on the date the adjustment is posted by the number of shares calculated in paragraph (c)(2)(i) of this section.

* * * * *

(f) * * *

(1) If multiple negative adjustments for the same attributable pay date for a participant are posted on the same business day, the amount removed from the participant's account and used to offset TSP administrative expenses or returned to the employing agency will be determined separately for each adjustment. Earnings and losses for erroneous contributions made on different dates will not be netted against each other. In addition, for negative adjustment for any attributable pay date, gains and losses from different sources of contributions or different investment funds will not be netted against each other. Instead, each attributable pay date each source of contributions and each investment fund will be treated separately for purposes of these calculations;

(2) The amount computed by application of the rules in this section will be removed from the participant's account *pro rata* from all investment funds, by source, based on the allocation of the participant's most recent account balance; and

* * * * *

24. Section 1605.13 is amended by removing paragraph (a)(4) and by revising paragraphs (a)(3), (b)(3), and (d) to read as follows:

§ 1605.13 Back pay awards and other retroactive pay adjustments.

(a) * * *

(3) All makeup contributions under this paragraph (a) and associated breakage will be invested according to the participant's contribution allocation on the posting date. However, breakage will be calculated using the G Fund share prices and, if applicable, rates of return, unless the court or other tribunal with jurisdiction over the back pay case orders otherwise.

(b) * * *

(3) All makeup contributions under this paragraph (b) and associated breakage will be posted to the participant's account based on the participant's contribution allocation on the posting date. However breakage will be calculated using the participant's contribution allocation on the ''as of'' date reported by the employing agency.

* * * * *

(d) *Prior withdrawal of TSP account.* If a participant has withdrawn his or her TSP account other than by purchasing an annuity, and the separation from Government employment upon which the withdrawal was based is reversed, resulting in reinstatement of the participant without a break in service, the participant will have the option to restore the amount withdrawn to his or her TSP account. The right to restore the withdrawn funds will expire if notice is not provided by the participant to the Board within 90 days of reinstatement. If the participant returns the funds that were withdrawn, the number of shares purchased will be determined by using the share price of the applicable investment fund on the posting date. No breakage will be incurred on any restored funds.

* * * * *

25. Section 1605.14 is amended by revising the section heading and paragraph (b) to read as follows:

§ 1605.14 Misclassified retirement system coverage.

* * * * *

(b) If a FERS participant is misclassified by an employing agency as a CSRS participant, when the misclassification is corrected:

(1) The participant may not elect to have the contributions made while classified as CSRS removed from his or her account;

(2) The participant may, under the rules of § 1605.11, elect to make up contributions that he or she would have been eligible to make as a FERS participant during the period of misclassification;

(3) The employing agency must, under the rules of § 1605.11, make agency automatic (1%) contributions and agency matching contributions on employee contributions that were made while the participant was misclassified;

(4) If the retirement coverage correction is a FERCCA correction, the employing agency must submit makeup employee contributions on late payment records. The participant is entitled to breakage (or lost earnings) on contributions from all three sources. Breakage (or lost earnings) will be calculated pursuant to § 1605.2. If the retirement coverage correction is not a FERCCA correction, the employing agency must submit makeup employee contributions on current payroll records; in such cases, the employee is not entitled to breakage. Agency makeup contributions may be submitted on either current or late payment records; and

(5) If employee contributions were made up before the Office of Personnel Management implemented its regulations on FERCCA correction, and the correction is considered to be a FERCCA correction, an amount to replicate TSP lost earnings will be calculated by the Office of Personnel Management pursuant to its regulations and provided to the employing agency for transmission to the TSP record keeper.

* * * * *

26. A new § 1605.15 is added to read as follows:

§ 1605.15 Reporting and processing late contributions and late loan payments.

(a) The employing agency must promptly submit late contributions to the TSP record keeper on behalf of the affected participant on late payment records as soon as the error is discovered. For each pay date involved, the employing agency must submit a separate record showing the ''as of'' date for the contributions. Breakage for both employee and agency contributions will be calculated, posted, and charged to the agency or forfeited to the TSP in accordance with § 1605.2.

(b) If an employing agency deducts loan payments from a participant's pay, but fails to submit those payments to the TSP for the pay date for which they were deducted (or submits them in a manner that prevents them from being timely credited to the participant's account), the employing agency will be responsible for paying breakage using the procedure described in § 1605.2. The loan payment record must contain the ''as of'' date for which the loan payment was deducted.

(c) All contributions or loan payments on payment records contained in a payroll submission received from an employing agency more than 2 days after the pay date associated with the payroll submission (as reported on the appropriate journal voucher), will be subject to breakage calculated, posted, and charged to the employing agency (or forfeited to the TSP) in accordance with § 1605.2. The employing agency will be apprised of the breakage due for each record reported on the late submission.

PART 1606—LOST EARNINGS ATTRIBUTABLE TO EMPLOYING AGENCY ERRORS

27. The authority citation for part 1606 continues to read as follows:

Authority: 5 U.S.C. 8432a, 8474(b)(3) and (c)(1). Section 1606.5 also issued under Title II, Pub. L. 106–265, 114 Stat. 770.

Subpart A—General Provisions

28. Section 1606.1 is revised to read as follows:

§ 1606.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) Definitions generally applicable to employing agency errors and their correction are set forth at 5 CFR 1605.1.

(c) As used in this part:

Lost earnings record means a data record containing information enabling the TSP system to compute lost earnings.

29. Section 1606.2 is revised to read as follows:

§ 1606.2 Purpose.

(a) With the implementation of the TSP's daily valued record keeping system, losses suffered by participants arising out of employing agency errors will be corrected by calculating and posting breakage to an affected participant's account. Breakage will be calculated as described in 5 CFR 1605.2. However, in some cases, an employing agency may have submitted contributions subject to lost earnings before implementation of the daily valued record keeping system. As a result, a transition period until March 31, 2003, is provided to enable employing agencies to submit lost earnings records associated with these contributions.

(b) After March 31, 2003, all makeup and late contributions subject to breakage should be reported as described in 5 CFR part 1605 and the use of lost earning records will be discontinued. Thus, only contributions and loan payments subject to lost earnings which were posted to participants' account before September 1, 2002, and for which lost earnings records are not submitted by August 31, 2002, are covered by this part. All payments posted after August 31, 2002, are covered by 5 CFR part 1605.

30. Section 1606.4 is amended by revising paragraph (c) to read as follows:

§ 1606.4 Applicability.

* * * * *

(c) As explained in § 1606.2, this part applies to errors that occurred before September 1, 2002.

* * * * *

Subpart B—Lost Earnings Attributable to Delayed or Erroneous Contributions

31. Section 1606.5 is amended by revising paragraph (a)(4) to read as follows:

§ 1606.5 Failure to timely make or deduct TSP contributions when participant received pay.

(a) * * *

(4) The lost earnings will be posted to the participant's account based on the contribution allocation in effect on the posting date.

* * * * *

§§ 1606.7 and 1606.8 [Removed]

32. Sections 1606.7 and 1606.8 are removed.

Subpart C—Lost Earnings Not Attributable to Delayed or Erroneous Contributions

33. Section 1606.9 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 1606.9 Loan allotments.

(a) * * *

(2) The TSP record keeper will compute lost earnings on the late loan allotment using the contribution allocation on file for the ''as of'' date of the payment; and

(3) The lost earnings will be posted to the participant's account based on the participant's contribution allocation at the time the lost earnings are posted.

* * * * *

Subpart E—Processing Lost Earnings Records

34. Section 1606.13 is revised to read as follows:

§ 1606.13 Calculation and crediting of lost earnings.

(a) Lost earnings records submitted pursuant to this part will be processed daily by the TSP record keeper.

(b) In calculating lost earnings attributable to a lost earnings record, earnings and losses for different sources of contributions or investment funds within a source will not be offset against each other.

(c) Notwithstanding any other provision of this part, where the net lost earnings computed in accordance with this part on any lost earnings record are less than zero within a source of contributions, the employing agency shall not be credited with respect to that source of contributions. The amount of the negative lost earnings shall be removed from the participant's account and applied against TSP administrative expenses.

Subpart F—[Removed]

35. Subpart F of part 1606 is removed.

36. Part 1640 is revised to read as follows:

PART 1640—PERIODIC PARTICIPANT STATEMENTS

Sec.

Authority: 5 U.S.C. 8439(c)(1) and (c)(2), 5 U.S.C. 8474(b)(5) and (c)(1).

§ 1640.1 Definitions.

Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

§ 1640.2 Information regarding account.

The Board will provide to each participant four (4) times each calendar year the information described in §§ 1640.3, 1640.4, and 1640.5. Plan participants can obtain account balance information on a more frequent basis from the TSP Web site and the ThriftLine.

§ 1640.3 Statement of individual account.

In the quarterly statements, the Board will furnish each participant with the following information concerning the participant's individual account:

(a) Name, Social Security number, and date of birth under which the account is established;

(b) Retirement system coverage and employment status of the participant, as provided by the employing agency;

(c) Statement whether the participant has a beneficiary designation on file with the TSP record keeper;

(d) Contribution allocation that is current at the end of the statement period;

(e) Beginning and ending dates of the period covered by the statement;

(f) The following information for and, as of the close of business on the ending date of, the period covered by the statement:

(1) The total account balance and tax-exempt balance, if applicable;

(2) The account balance and activity for each source of contributions;

(3) The account balance and activity in each of the investment funds, including the number of shares, the share prices, and the dollar amounts; and

(4) Loan information and activity, if applicable;

(g) Any other information concerning the account that the Board determines should be included in the statement.

§ 1640.4 Account transactions.

(a) Where relevant, the following transactions will be reported in each individual account statement:

(1) Contributions;

(2) Withdrawals;

(3) Forfeitures;

(4) Loan disbursements and repayments;

(5) Transfers among investment funds;

(6) Adjustments to prior transactions;

(7) Transfers or rollovers from eligible employer plans and traditional IRAs; and

(8) Any other transaction that the Executive Director determines will affect the status of the individual account.

(b) Where relevant, the statement will contain the following information concerning each transaction identified in paragraph (a) of this section:

(1) Type of transaction;

(2) Investment funds affected;

(3) Date the transaction was posted and, where relevant, any earlier date on which the transaction should have been posted or from which the calculation of the amount of the transaction was derived;

(4) Source of the contributions affected by the transaction;

(5) Amount of the transaction (in dollars and in shares);

(6) The share price(s) at which the transaction was posted; and

(7) Any other information the Executive Director deems relevant.

§ 1640.5 Investment fund information.

Each open season, the Board will furnish each participant a statement concerning each of the investment funds. This statement will contain the following information concerning each investment fund:

(a) A summary description of the type of investments made by the fund, written in a manner that will allow the participant to make an informed decision; and

(b) The performance history of the type of investments made by the fund, covering the five-year period preceding the date of the evaluation.

§ 1640.6 Methods of providing information.

(a) *Individual account statement.* The information concerning each participant's individual account described in §§ 1640.3 and 1640.4 will be sent to the participant at the participant's address of record in the TSP system by first class mail, unless otherwise elected under paragraph (b) of this section. It is the participant's responsibility to provide his or her current address to his or her agency or, in the case of a separated participant, to the TSP record keeper. For employed participants, the employing agency must provide the current address to the TSP record keeper.

(b) *Individual account statements available from the TSP Web site.* As an alternative to receiving an account statement by mail as provided in paragraph (a) of this section, participants may elect to receive their individual account statements by accessing the TSP Web site. Participants who elect to receive their statements from the TSP Web site will not receive a statement by mail.

(c) *Investment information.* The investment information described in § 1640.5 will be furnished to each participant by:

(1) Mailing the information to the participant by the method described in paragraph (a) of this section;

(2) Making the information available to the participant on the TSP Web site as described in paragraph (b) of this section; or

(3) Including the information in material published by the Board and distributed in a manner reasonably designed to reach the participant. This includes distributing the material through the participant's employing agency, service, or, in the case of a separated employee, through the TSP record keeper.

37. Part 1645 is revised to read as follows:

PART 1645—CALCULATION OF SHARE PRICES

Sec.

Authority: 5 U.S.C. 8439(a)(3) and 8474.

§ 1645.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

Accrued means that income is accounted for when earned and expenses are accounted for when incurred.

Administrative expenses means expenses described in 5 U.S.C. 8437(c)(3).

Basis means the number of shares of an investment fund upon which the calculation of a share price is based.

Business day means any calendar day for which share prices are calculated.

Forfeitures means amounts forfeited to the TSP pursuant to 5 U.S.C. 8432(g)(2) and other non-statutory forfeited amounts, net of restored forfeited amounts.

§ 1645.2 Posting of transactions.

Contributions, loan payments, loan disbursements, withdrawals, interfund transfers, and other transactions will be posted in dollars and in shares by source and by investment fund to the appropriate individual account by the TSP record keeper, using the share price for the date the transaction is posted.

§ 1645.3 Calculation of total net earnings for each investment fund.

(a) Each business day net earnings will be calculated separately for each investment fund.

(b) Net earnings for each investment fund will equal:

(1) The sum of the following items, if any, accrued since the last business day:

(i) Interest on money of that investment fund which is invested in the Government Securities Investment Fund;

(ii) Interest on other short-term investments of the investment fund;

(iii) Other income (such as dividends, interest, or securities lending income) on investments of the investment fund; and

(iv) Capital gains or losses on investments of the investment fund, net of transaction costs.

(2) Minus the accrued administrative expenses of the investment fund, determined in accordance with § 1645.4.

(c) The net earnings for each investment fund determined in accordance with paragraph (b) of this section will be added to the residual net earnings for that investment fund from the previous business day, as described in § 1645.5(b), to produce the total net earnings. The total net earnings will be used to calculate the share price for that business day.

§ 1645.4 Administrative expenses attributable to each investment fund.

A portion of the administrative expenses accrued during each business day will be charged to each investment fund. An investment fund's respective portion of administrative expenses will be determined as follows:

(a) Accrued administrative expenses (other than those described in paragraph (b) of this section) will be reduced by accrued forfeitures and accrued earnings on forfeitures, abandoned accounts, and unapplied deposits;

(b) Investment management fees and other accrued administrative expenses attributable only to the F Fund, C Fund, S Fund, or I Fund will be charged solely to the F Fund, C Fund, S Fund, or I Fund, respectively;

(c) The amount of accrued administrative expenses not covered by forfeitures under paragraph (a) of this section, and not described in paragraph (b) of this section, will be charged on a *pro rata* basis to all investment funds,

based on the respective investment fund balances on the last business day of the prior month end.

§ 1645.5 Calculation of share prices.

(a) *Calculation of share price.* The shares of each investment fund will have an initial value of $10.00. The share price for each investment fund for each business day will apply to all sources of contributions for that investment fund. The total net earnings (as computed under § 1645.3) for each investment fund will be divided by the total fund basis (as computed under § 1645.6) for that investment fund. The resulting number, computed to ten decimal places, represents the incremental change for the current business day in the value of that investment fund from the last business day. The share price for that investment fund for the current business day is the sum of the incremental change in the share price for the current business day plus the share price for the prior business day, truncated to two decimal places.

(b) *Residual net earnings.* When the total net earnings for each business day for each investment fund are divided by the total fund basis in that investment fund, there will be residual net earnings attributable to the truncation described in paragraph (a) of this section that will not be included in the incremental change in the share price of the investment fund for that business day. The residual net earnings that are not included in the incremental share price for the investment fund will be added to the earnings for that investment fund on the next business day.

§ 1645.6 Basis for calculation of share prices.

The total fund basis for each investment fund will be the sum of the number of shares in all individual accounts from all sources of contributions in that investment fund as of the opening of business on each business day.

38. Part 1650 is revised to read as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

Subpart A—General

Sec.
1650.1 Definitions.
1650.2 Eligibility for a TSP withdrawal.
1650.3 Frozen accounts.
1650.4 Certification of truthfulness.

Subpart B—Post-Employment Withdrawals

1650.11 Withdrawal elections.
1650.12 Single payment.
1650.13 Monthly payments.
1650.14 Annuities.
1650.15 Abandonment of inactive accounts.
1650.16 Required withdrawal date.
1650.17 Changes and cancellation of withdrawal request.

Subpart C—Procedures for Post-Employment Withdrawals

1650.21 Information provided by employing agency.
1650.22 Accounts of $200 or more.
1650.23 Accounts of less than $200.
1650.24 How to obtain a post-employment withdrawal.
1650.25 Taxes related to post-employment withdrawals.

Subpart D—In-Service Withdrawals

1650.31 Age-based withdrawals.
1650.32 Financial hardship withdrawals.
1650.33 Contributing to the TSP after an in-service withdrawal.
1650.34 Uniqueness of loans and withdrawals.

Subpart E—Procedures for In-Service Withdrawals

1650.41 How to obtain an age-based withdrawal.
1650.42 How to obtain a financial hardship withdrawal.
1650.43 Taxes related to in-service withdrawals.

Subpart F—[Reserved]

Subpart G—Spousal Rights

1650.61 Spousal rights applicable to post-employment withdrawals.
1650.62 Spousal rights applicable to in-service withdrawals.
1650.63 Executive Director's exception to the spousal notification requirement.
1650.64 Executive Director's exception to the spousal consent requirement.

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), and 8474(c)(1).

Subpart A—General

§ 1650.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

Eligible employer plan means a plan qualified under I.R.C. section 401(a) (26 U.S.C. 401(a)), including a section 401(k) plan, profit-sharing plan, defined benefit plan, stock bonus plan, and money purchase plan; an annuity plan described in I.R.C. section 403(a) (26 U.S.C. 403(a)); an annuity contract described in I.R.C. section 403(b) (26 U.S.C. 403(b)); and an eligible deferred compensation plan described in I.R.C. section 457(b) (26 U.S.C. 457(b)) which is maintained by an eligible employer described in I.R.C. section 457(e)(1)(A) (26 U.S.C. 457(e)(1)(A)).

In-service withdrawal means an age-based or financial hardship withdrawal from the TSP that may be available to a participant who has not yet separated from Government service.

Post-employment withdrawal means a withdrawal from the TSP that is available to a participant who is separated from Government service.

Reimbursement means a payment made to or on behalf of a participant by any person or entity to cover the cost of an extraordinary expense described in § 1650.32(b)(2).

Traditional IRA means an individual retirement account described in I.R.C. section 408(a) (26 U.S.C. 408(a)) and an individual retirement annuity described in I.R.C. section 408(b) (26 U.S.C. 408(b)) (other than an endowment contract).

§ 1650.2 Eligibility for a TSP withdrawal.

(a) A participant who is separated from Government service can elect to withdraw a portion of his or her account balance in a single payment or the entire account balance by one or a combination of the withdrawal methods described in subpart B of this part.

(b) A post-employment withdrawal will not be paid unless TSP records indicate that the participant is separated from Government service. Upon receipt of information from an employing agency that a participant is no longer separated, the TSP will cancel a post-employment withdrawal election.

(c) A participant cannot make a post-employment withdrawal until any outstanding TSP loan has either been repaid in full or declared to be a taxable distribution. An outstanding TSP loan will not affect a participant's eligibility for an in-service withdrawal.

(d) A separated participant who is reemployed in a position in which he or she is eligible to participate in the TSP is subject to the following rules:

(1) A participant who is reemployed in a TSP-eligible position on or before the 31st full calendar day after separation is not eligible to withdraw his or her TSP account in accordance with subpart B of this part.

(2) A participant who is reemployed in a TSP-eligible position more than 31 full calendar days after separation and who made a post-employment withdrawal while separated may not withdraw any remaining portion of his or her account balance in accordance with subpart B of this part until he or she again separates from Government service.

(e) A participant who has not separated from Government service may be eligible to withdraw all or a portion of his or her account in accordance with subparts D and E of this part.

(f) A participant can elect to have any portion of a single or monthly payment

that is not transferred to an eligible employer plan or traditional IRA deposited directly, by electronic funds transfer, into a savings or checking account at a financial institution in the United States.

(g) If a participant has a civilian TSP account and a uniformed services TSP account, the rules in this part apply to each account separately. For example, the participant is eligible to take one age-based in-service withdrawal from each account.

§ 1650.3 Frozen accounts.

(a) All withdrawals from the TSP are subject to the rules relating to spousal rights (found in subpart G of this part) and to domestic relations orders, alimony and child support legal process, and child abuse enforcement orders (found in 5 CFR part 1653).

(b) A participant may not withdraw any portion of his or her account balance if the account is frozen due to a pending retirement benefits court order, an alimony or child support enforcement order, or a child abuse enforcement order, or because a freeze has been placed on the account by the TSP for another reason.

§ 1650.4 Certification of truthfulness.

(a) By signing a TSP withdrawal form, electronically or on paper, the participant certifies, under penalty of perjury, that all information provided to the TSP during the withdrawal process is true and complete, including statements concerning the participant's marital status and, where applicable, the spouse's address at the time the application is filed or the current spouse's consent to the withdrawal.

(b) If the Board receives a written allegation from the spouse that the participant may have misrepresented his or her marital status or the spouse's address (in the case of a CSRS participant), or that the signature of the spouse of a FERS participant or uniformed services member was forged, the Board will submit the information or document in question to the spouse and request that he or she state in writing that the information is false or that the spouse's signature was forged. In the event of an alleged forgery, the Board will also request the spouse to provide at least three samples of his or her signature.

(c) If the spouse affirms the allegation, the Board will conduct an investigation. If, during its investigation, the Board finds evidence to suggest that the participant misrepresented his or her marital status or spouse's address (in the case of a CSRS participant), or submitted the withdrawal form with a forged signature, the Board will refer the case to the Department of Justice for criminal prosecution and, if the participant is still employed, to the Inspector General or other appropriate authority in the participant's employing agency for administrative action.

Subpart B—Post-Employment Withdrawals

§ 1650.11 Withdrawal elections.

(a) Subject to the restrictions in this subpart, participants may elect to withdraw all or a portion of their TSP accounts in a single payment, a series of monthly payments, a life annuity, or any combination of these options.

(b) If a participant's account balance is less than $5.00 when he or she separates from Government service, the balance will automatically be forfeited to the TSP. The participant can reclaim the money by writing to the TSP record keeper and requesting the amount that was forfeited; however, TSP investment earnings will not be credited to the account after the date of the forfeiture.

§ 1650.12 Single payment.

(a) *Partial withdrawal.* A participant can elect to withdraw a portion of his or her account balance in a single payment and leave the rest in the TSP until a later date, subject to § 1650.16 and the following requirements:

(1) The participant is eligible for a partial withdrawal only if he or she did not take an age-based in-service withdrawal from that account.

(2) The participant may not elect a partial withdrawal of less than $1,000. No disbursement will be made if, at the time of payment, the account balance is less than $1,000.

(3) Only one partial withdrawal is permitted.

(b) *Full withdrawal.* A participant can elect to withdraw his or her entire account balance in a single payment.

§ 1650.13 Monthly payments.

(a) A participant electing a full post-employment withdrawal (i.e., a withdrawal of his or her entire account) can elect to withdraw all or a portion of the account balance in a series of substantially equal monthly payments, to be paid in one of the following manners:

(1) *A specific dollar amount.* The amount elected must be at least $25 per month; if the amount elected is less than $25 per month, the request will be rejected. Payments will be made in the amount requested each month until the account balance is expended.

(2) *A monthly payment amount calculated based on life expectancy.* Payments based on life expectancy are determined using the factors set forth in Internal Revenue Service life expectancy tables set forth at 26 CFR 1.401(a)(9)–9, Q&A 1 and 2. The monthly payment amount is calculated by dividing the account balance by the factor from the IRS life expectancy tables based upon the participant's age as of his or her birthday in the year payments are to begin. This amount is then divided by 12 to yield the monthly payment amount. In subsequent years, the monthly payment amount is recalculated each January by dividing the prior December 31 account balance by the factor in the IRS life expectancy tables based upon the participant's age as of his or her birthday in the year payments will be made. There is no minimum amount for a monthly payment calculated based on this method.

(b) A participant receiving monthly payments calculated based upon life expectancy can make one election, during a period to be determined by the Executive Director, to change to a fixed monthly payment. Alternatively, the participant can change the amount of his or her fixed payments annually. A participant who is receiving monthly payments based on a fixed dollar amount, however, cannot, elect to change to an amount calculated based on life expectancy.

(c) A participant receiving monthly payments, regardless of the calculation method, can elect at any time to receive the remainder of his or her account balance in a final single payment.

(d) The TSP will ensure that the annual total monthly payments satisfy any applicable minimum distribution requirement of the Internal Revenue Code by making a supplemental payment in December of the year in which a minimum distribution is required.

(e) A participant receiving monthly payments may change the investment of his or her account balance among the TSP investment funds as provided in 5 CFR part 1601.

(f) Participants who elect to withdraw their account balances in a series of monthly payments cannot transfer or roll over money from a traditional IRA or eligible employer plan into their TSP accounts. Participants who have both a civilian TSP account and a uniformed services TSP account cannot combine the two accounts if they are already receiving monthly payments from one of the accounts.

§ 1650.14 Annuities.

(a) A participant electing a full post-employment withdrawal can use all or

a portion of his or her account balance to purchase a life annuity. The portion of the participant's account balance elected and available for the annuity purchase must be at least $3,500. The TSP will purchase the annuity from the TSP's annuity vendor using the participant's entire account balance or the portion specified, unless an amount is necessary to satisfy any applicable minimum distribution requirement of the Internal Revenue Code. In the event that a minimum distribution is required before the date of the first annuity payment, the TSP will compute that amount and pay it directly to the participant.

(b) An annuity will provide a payment for life to the participant and, if applicable, to the participant's survivor, in accordance with the type of annuity chosen. The first annuity payment will be made by the TSP annuity vendor approximately 30 days after the TSP purchases the annuity.

(c) The amount of an annuity payment will depend on the type of annuity chosen, the participant's age when the annuity is purchased (and the age of the joint annuitant, if applicable), the amount used to purchase the annuity, and the interest rate available when the annuity is purchased.

(d) Participants may choose among the following types of annuities:

(1) *A single life annuity with level payments.* This annuity provides monthly payments to the participant as long as the participant lives. The amount of the monthly payment remains constant.

(2) *A joint life annuity for the participant and spouse with level payments.* This annuity provides monthly payments to the participant, as long as both the participant and spouse are alive, and monthly payments to the survivor, as long as the survivor is alive. The amount of the monthly payment remains constant, although the amount received will depend on the type of survivor benefit elected.

(3) *A joint life annuity for the participant and another person with level payments.* This annuity provides monthly payments to the participant as long as both the participant and the joint annuitant are alive, and monthly payments to the survivor as long as the survivor is alive. The amount of the monthly payment remains constant. The joint annuitant must be either a former spouse or a person who has an insurable interest in the participant.

(i) A person has an ''insurable interest in the participant'' if the person is financially dependent on the participant and could reasonably expect to derive financial benefit from the participant's continued life.

(ii) A relative (either blood or adopted, but not by marriage) who is closer than a first cousin is presumed to have an insurable interest in the participant.

(iii) A participant can establish that a person not described in paragraph (d)(4)(ii) of this section has an insurable interest in him or her by submitting, with the annuity request, an affidavit from a person other than the participant or the joint annuitant that demonstrates that the designated joint annuitant has an insurable interest in the participant (as described in paragraph (d)(4)(i) of this section).

(4) *Either a single life or joint (with spouse) life annuity with increasing payments.* This annuity provides monthly payments to the participant only, or to the participant and spouse, as applicable. The monthly payments are adjusted once each year on the anniversary of the first payment, based on the Federal Bureau of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Each year, the percentage change in the monthly unadjusted CPI–W index for July, August, and September over the monthly unadjusted CPI–W index for July, August, and September of the prior year is calculated. The following calendar year, the amount of the monthly payment is adjusted by the lesser of 3% or the percentage increase in the CPI–W, if any. In no case will the amount of the monthly payment be decreased based on the CPI–W. If the participant chooses a joint life annuity, the annual increase also applies to benefits received by the survivor.

(e) A participant who chooses a joint life annuity (with either a spouse, a former spouse, or a person with an insurable interest) must choose either a 50 percent or a 100 percent survivor benefit. The survivor benefit applies when either the participant or the joint annuitant dies.

(1) A 50 percent survivor benefit provides a monthly payment to the survivor that is 50 percent of the amount of the payment that is made when both the participant and the joint annuitant are alive.

(2) A 100 percent survivor benefit provides a monthly payment to the survivor which is equal to the amount of the payment that is made when both the participant and the joint annuitant are alive.

(3) Either the 50 percent or the 100 percent survivor benefit may be combined with any joint life annuity option. However, the 100 percent survivor benefit can only be combined with a joint annuity with a person other than the spouse (or a former spouse, if required by a retirement benefits court order) if the joint annuitant is not more than 10 years younger than the participant.

(f) The following features are mutually exclusive, but can be combined with certain types of annuities, as indicated:

(1) *Cash refund.* This feature provides that, if the participant (and joint annuitant, where applicable) dies before an amount equal to the balance used to purchase the annuity has been paid out, the difference between the balance used to purchase the annuity and the sum of monthly payments already made will be paid to the beneficiary(ies) designated by the participant (or by the joint annuitant, where applicable). This feature can be combined with any type of annuity.

(2) *Ten-year certain.* This feature provides that, if the participant dies before annuity payments have been made for 10 years (120 payments), monthly payments will be made to the beneficiary(ies) until 120 payments have been made. This feature can be combined with any single life annuity, but cannot be combined with a joint life annuity.

(g) Once an annuity has been purchased, the type of annuity, the annuity features, and the identity of the joint annuitant cannot be changed, and the annuity cannot be terminated.

§ 1650.15 Abandonment of inactive accounts.

A participant must select a withdrawal option by the time he or she reaches age 70½. If the participant does not do so and the TSP is unable to locate the participant, the inactive account will be declared abandoned in accordance with § 1650.16.

§ 1650.16 Required withdrawal date.

(a) A participant must withdraw his or her account under § 1650.12, or begin receiving payments under §§ 1650.13 or 1650.14, by April 1 of the year following the year in which the participant reaches 70½ years of age or separates from Government service, whichever is later.

(b) For account balances of $200 or more, a separated participant may elect to withdraw his or her account or to begin receiving payments before the date described in paragraph (a) of this section, but is not required to do so.

(c) In the event that a participant does not withdraw his or her account or begin receiving payments in accordance with paragraph (a) of this section, the Board will transfer all of the funds in

the participant's account not already invested in the Government Securities Investment (G) Fund to that fund. A notice of this action will be sent to the participant with a warning that his or her account will be declared abandoned and forfeited unless the participant comes into compliance with paragraph (a) of this section within 90 days of the date of the notice.

(d) If the participant does not take the appropriate withdrawal action within the 90-day period provided in paragraph (c) of this section, the Board will purchase an annuity for the participant after the following steps have been taken:

(1) The account has been declared abandoned and the funds in the account have been forfeited;

(2) A notice of this action has been sent to the participant;

(3) The participant reclaims the account balance that was abandoned, but decides against a withdrawal pursuant to §§ 1650.12 or 1650.13; and

(4) The participant provides the information that the Board needs to purchase an annuity pursuant to § 1650.14.

§ 1650.17 Changes and cancellation of a withdrawal request.

(a) *Before processing.* A pending withdrawal request can be cancelled if the cancellation is processed before the TSP processes the withdrawal request. However, the TSP processes withdrawal requests each business day. Withdrawal requests that are entered into the system by 11 a.m. central time ordinarily will be processed that night; those entered after 11 a.m. central time will be processed the next business day. Consequently, a cancellation request must be received and entered into the system before the cut-off for the day the withdrawal request is submitted for processing in order to be effective to cancel the withdrawal.

(b) *After processing.* A withdrawal election cannot be changed or cancelled after the withdrawal request has been processed.

(c) *Change in monthly payments.* If a participant is receiving a series of monthly payments, the participant can change at any time: his or her withdrawal election to request a final single payment, the address to which the payments are mailed, whether or not a payment will be transferred (if permitted) and the portion to be transferred, the identity of the financial institution to which payments are transferred or sent by EFT, the identity of the EFT account, or the method by which direct payments to the participant are being sent (EFT or check). Once a year, during a period determined by the Executive Director, the participant may also elect to change the payment amount.

Subpart C—Procedures for Post-Employment Withdrawals

§ 1650.21 Information provided by employing agency.

(a) *Information to be provided to the TSP.* When a TSP participant separates from Government service, his or her employing agency must report the separation and the date of separation to the TSP record keeper. Until the TSP record keeper receives this information from the employing agency, it will not pay a post-employment withdrawal.

(b) *Information to be provided to the participant.* When a TSP participant separates from Government service, his or her employing agency must furnish the participant with the most recent copy of the TSP withdrawal booklet and annuity booklet, withdrawal forms, and tax notice. The employing agency is also responsible for counseling participants concerning TSP withdrawals.

§ 1650.22 Accounts of $200 or more.

A participant whose account balance is $200 or more must submit a properly completed withdrawal election to request a post-employment withdrawal of his or her account balance.

§ 1650.23 Accounts of less than $200.

Upon receipt of information from the employing agency that a participant has been separated for more than 31 days or after closure of any outstanding loan, whichever is later, the TSP record keeper will send the participant a check for the entire amount of his or her account balance if the account balance is $5.00 or more but less than $200. The participant may not elect to leave this amount in the TSP, nor will the TSP transfer this amount to an eligible employer plan or traditional IRA. (However, the participant may elect to roll over this payment into an eligible employer plan or traditional IRA.)

§ 1650.24 How to obtain a post-employment withdrawal.

To request a post-employment withdrawal under this subpart, a participant must submit to the TSP record keeper a properly completed post-employment withdrawal request Form TSP–70 or Form TSP-U–70, or use the TSP Web site to do so. (A participant's ability to complete a post-employment withdrawal request form on the Web will depend on his or her retirement system coverage, withdrawal election, account balance, marital status, and whether or not the withdrawal will be transferred to an eligible employer plan or traditional IRA.

§ 1650.25 Taxes related to post-employment withdrawals.

(a) When a payment is made directly to a participant from the TSP after the participant has separated from Government service, the money is taxable income in the year in which the payment is made (except contributions from combat zone pay, which are not subject to taxation). However, a participant does not pay taxes on money that the TSP transfers directly or the participant rolls over to an eligible employer plan or traditional IRA until the money is withdrawn from the plan or IRA. In addition, any portion of a participant's TSP account which is used to purchase an annuity is not taxed at the time the annuity is purchased; monthly annuity payments are taxable income in the year in which they are paid.

(b) A participant may request that the TSP transfer directly to an eligible employer plan or traditional IRA all or part of any withdrawal that is an ''eligible rollover distribution'' under the Internal Revenue Code. A withdrawal that is not an eligible rollover distribution cannot be transferred to an eligible employer plan or traditional IRA. If an eligible rollover distribution is not transferred, it is subject to mandatory 20% withholding.

(c) An eligible employer plan or traditional that can accept a transfer must be a plan or IRA maintained in the United States, which means one of the 50 states or the District of Columbia.

(d) The following TSP withdrawal methods are considered eligible rollover distributions under the Internal Revenue Code, 26 U.S.C. 402(c)(4):

(1) A single payment, as described in § 1650.12;

(2) Monthly payments, as described in § 1650.13, where payments are expected to last less than 10 years at the time they begin. This means that if the participant elects a monthly payment amount, the amount, when divided into the participant's account balance at the time of the first payment, must yield a number less than 120. If the participant elects to change the payment amount after payments begin, future payments may not continue to qualify as eligible rollover distributions if they do not also meet the requirements of this rule; and

(3) A final single payment, as described in § 1650.13(c).

(e) The following withdrawal methods are not eligible rollover distributions:

(1) An annuity purchased by the TSP;

(2) Monthly payments that do not meet the criteria set forth in paragraph (d)(2) of this section;

(3) A minimum distribution payment or any portion of a payment which represents a minimum distribution;

(4) A plan loan that is deemed to be a taxable distribution because of default; and

(5) A return of excess elective deferrals.

Subpart D—In-Service Withdrawals

§ 1650.31 Age-based withdrawals.

(a) A participant who has reached age 59½ and who has not separated from Government employment is eligible to withdraw all or a portion of his or her vested TSP account balance in a single payment. The amount of an age-based withdrawal request, both at the time of the request and at disbursement, must be at least $1,000, unless the withdrawal request is for the entire vested account balance.

(b) An age-based withdrawal is an eligible rollover distribution, so a participant may request that the TSP transfer all or a portion of the withdrawal to an eligible employer plan or traditional IRA.

(c) A participant is permitted only one age-based withdrawal for an account.

(d) A participant who makes an age-based withdrawal is not eligible to make a partial withdrawal after separating from Government service.

§ 1650.32 Financial hardship withdrawals.

(a) A participant who has not separated from Government employment and who can demonstrate financial hardship is eligible to withdraw all or a portion of his or her own contributions to the TSP (and their attributable earnings) in a single payment to meet certain specified financial obligations. The amount of a financial hardship withdrawal, both at the time of the request and at disbursement, must be at least $1,000.

(b) A participant will demonstrate financial hardship if he or she meets one or both of the following tests:

(1) Based on TSP calculations, the participant's monthly cash flow is negative (*i.e.,* net cash income is less than ordinary monthly cash household expenses).

(2) The participant has incurred or will incur within the next six months extraordinary expenses which he or she has not paid, for which the participant has not been and will not be reimbursed, and which cannot be met by his or her monthly cash flow over a period of six months. Documentation of the expenses must be dated within 45 days of the date of the withdrawal request. Extraordinary expenses are limited to the following four types:

(i) Medical expenses payable by the participant and related to the treatment of the participant, the participant's spouse, or the participant's dependents. Generally, eligible expenses are those that would be eligible for deduction as medical expenses for Federal income tax purposes, but without regard to the Internal Revenue Service's (IRS) income limitations on deductibility. However, the following expenses that are allowed by the IRS are not eligible TSP medical expenses: health insurance premiums and expenses associated with household improvements required as a result of a medical condition, illness, or injury to the participant, the participant's spouse, or the participant's dependents. These items are already taken into account elsewhere in the TSP financial hardship calculations.

(ii) The cost of household improvements required as a result of a medical condition, illness or injury to the participant, the participant's spouse, or the participant's dependents, which is eligible for deduction as a medical expense for Federal income tax purposes, but without regard to the IRS income limitations on deductibility or the fair market value of the property. Household improvements are structural improvements to the participant's living quarters or the installation of special equipment that is necessary to accommodate the circumstances of the incapacitated person.

(iii) The cost of repair or replacement resulting from a personal casualty loss that would be eligible for deduction for Federal income tax purposes, but without regard to the IRS income limitations on deductibility, fair market value of the property, or number of events. Personal casualty loss includes damage, destruction, or loss of property resulting from a sudden, unexpected, or unusual event, such as an earthquake, hurricane, tornado, flood, storm, fire, or theft.

(iv) Legal expenses, which are limited to attorney fees and court costs associated with separation or divorce. Court-ordered payments to a spouse or former spouse and child support payments are not allowed, nor are costs of obtaining prepaid legal services or other coverage for legal services.

(c) The amount of a participant's financial hardship withdrawal cannot exceed the smallest of the following:

(1) The amount requested;

(2) The amount in the participant's account that is equal to his or her own contributions and attributable earnings; or

(3)(i) The amount which would both:

(A) Make up the participant's negative cash flow for a period of six months in the case of a financial hardship withdrawal based on ordinary monthly household expenses; and

(B) Pay documented extraordinary expenses, if any.

(ii) If the TSP calculates that the participant has a negative cash flow and extraordinary expenses, the amount of the net disbursement is equal to six times the amount of the negative monthly cash flow plus the amount of the extraordinary expenses. If the TSP calculates that the participant has a positive cash flow, the amount of the disbursement is equal to the amount of the documented extraordinary expenses minus six times the amount of the positive monthly cash flow.

(d) A participant is not eligible for an in-service hardship withdrawal during the time he or she has pending a petition in bankruptcy under Chapter 13 of the Bankruptcy Code.

§ 1650.33 Contributing to the TSP after an in-service withdrawal.

(a) A participant's TSP contribution election will not be affected by an age-based in-service withdrawal; therefore, his or her TSP contributions will continue without interruption.

(b) A participant who obtains a financial hardship in-service withdrawal may not contribute to the TSP for a period of six months after the withdrawal is processed. Therefore, the participant's TSP contributions (and any applicable agency matching contributions) will be discontinued by his or her agency for six months after the agency is notified by the TSP; in the case of a FERS participant, agency automatic 1% contributions will continue. A participant whose TSP contributions are discontinued by his or her agency after a financial hardship withdrawal can resume contributions any time after expiration of the six-month period by submitting a new TSP contribution election. Contributions will not resume automatically.

§ 1650.34 Uniqueness of loans and withdrawals.

An outstanding TSP loan cannot be converted into an in-service withdrawal or vice versa. Funds distributed as an in-service withdrawal cannot be returned or repaid.

Subpart E—Procedures for In-Service Withdrawals

§ 1650.41 How to obtain an age-based withdrawal.

To request an age-based in-service withdrawal under this subpart, a

participant must submit to the TSP record keeper a properly completed age-based withdrawal request, Form TSP–75 or TSP–U–75, or use the TSP Website to initiate a request. A participant's ability to complete an age-based withdrawal on the Web will depend on his or her retirement system coverage, marital status, and whether or not part or all of the withdrawal will be transferred to an eligible employer plan or traditional IRA.

§ 1650.42 How to obtain a financial hardship withdrawal.

(a) To request a financial hardship in-service withdrawal, a participant must submit to the TSP Service Office a properly completed financial hardship withdrawal form, Form TSP–76 or Form TSP–U–76, an earnings and leave statement dated within 45 days before the TSP record keeper's receipt of a withdrawal request, and supporting documentation for any extraordinary expenses listed on the application. These requirements apply even if the participant is in a non-pay status at the time the request is submitted.

(b) There is no limit on the number of financial hardship withdrawals a participant can make; however, the TSP will not accept a financial hardship withdrawal request for a period of six months after a financial hardship disbursement is made.

§ 1650.43 Taxes related to in-service withdrawals.

(a) When an in-service withdrawal is paid directly from the TSP to a participant, the money is taxable income in the year in which the payment is made (except contributions from combat zone pay, which are not subject to taxation). However, a participant does not pay taxes on an age-based withdrawal that the TSP transfers directly or the participant rolls over to an eligible employer plan or traditional IRA until the money is withdrawn.

(b) An age-based in-service withdrawal from the TSP is an eligible rollover distribution, and a participant may request the TSP to transfer all or a portion of an age-based in-service withdrawal to an eligible employer plan or traditional IRA, consistent with § 1650.25. If the withdrawal is not transferred, it is subject to mandatory 20% withholding.

(c) A financial hardship in-service withdrawal from the TSP is not an eligible rollover distribution, and a participant therefore may not request the TSP to transfer a financial hardship in-service withdrawal to an eligible employer plan or traditional IRA. A financial hardship in-service withdrawal is subject to 10% withholding. The withholding is not mandatory; the participant may either avoid the withholding or increase the amount of withholding by submitting IRS Form W–4P, Withholding Certificate for Pension or Annuity Payments, to the TSP.

Subpart F—[Reserved]

Subpart G—Spousal Rights

§ 1650.61 Spousal rights applicable to post-employment withdrawals.

(a) The spousal rights described in this section apply to full post-employment withdrawals when the participant's vested TSP account balance exceeds $3,500, and to partial post-employment withdrawals without regard to the amount of the participant's account balance.

(b) The spouse of a CSRS participant is entitled to notice when the participant applies for a post-employment withdrawal, unless the participant was granted an exception under § 1650.64 to the spousal notification requirement within 90 days of the date the withdrawal request is received by the TSP. The participant must provide the TSP record keeper with the spouse's correct address and Social Security Number. The TSP record keeper will send the required notice by first class mail to the spouse at the most recent address provided by the participant.

(c) The spouse of a FERS or uniformed services participant has a right to a joint and survivor annuity with a 50 percent survivor benefit, level payments, and no cash refund based on the participant's entire account balance when the participant elects a full post-employment withdrawal. The participant may make a different withdrawal election only if his or her spouse waives the right to this annuity.

(1) To show that the spouse has waived the right to this annuity, the participant must submit to the TSP record keeper a properly completed withdrawal request form, signed by his or her spouse in the presence of a notary, unless the participant was granted an exception under § 1650.65 to the spousal notification requirement within 90 days of the date the withdrawal form is received by the TSP.

(2) Because a partial post-employment withdrawal will diminish the amount in the account that is available for a joint and survivor annuity, a spouse's consent is required before a partial withdrawal will be approved, regardless of the amount to be withdrawn.

(3) Both a spouse's waiver of a joint and survivor annuity and a spouse's consent to a partial withdrawal must be properly notarized.

(4) Once the spouse's waiver or consent, as the case may be, has been received by the TSP record keeper, the spouse's waiver or consent is irrevocable for that withdrawal.

§ 1650.62 Spousal rights applicable to in-service withdrawals.

(a) The spousal rights described in this section apply to all in-service withdrawals and do not depend on the amount of the participant's vested account balance or the amount requested for withdrawal.

(b) The spouse of a CSRS participant is entitled to notice when the participant applies for an in-service withdrawal, unless the participant was granted an exception under § 1650.64 to the spousal notification requirement within 90 days before the date on which the withdrawal request was submitted to the TSP. The participant must provide the TSP record keeper with the spouse's correct address and Social Security number. The TSP record keeper will send the required notice by first class mail to the spouse at the most recent address provided by the participant.

(c) A participant who is covered by FERS or who is a member of the uniformed services must obtain the consent of his or her spouse before obtaining an in-service withdrawal, unless the participant was granted an exception under § 1650.65 to the signature requirement within 90 days of the date the withdrawal form is submitted to the TSP. To show the spouse's consent, a participant must submit to the TSP record keeper a properly completed withdrawal request form, signed by his or her spouse in the presence of a notary. Once a form containing the spouse's consent has been submitted to the TSP record keeper, the spouse's consent is irrevocable for that withdrawal.

§ 1650.63 Executive Director's exception to the spousal notification requirement.

(a) Whenever this subpart requires the Executive Director to give notice of an action to the spouse of a CSRS participant, an exception to this requirement may be granted if the participant establishes to the satisfaction of the Executive Director that the spouse's whereabouts cannot be determined. A request for an exception to the notification requirement based on unknown whereabouts must be submitted to the Executive Director on Form TSP–16 or Form TSP–U–16,

Exception to Spousal Requirements, accompanied by one of the following:

(1) A court order stating that the spouse's whereabouts cannot be determined;

(2) A police or governmental agency determination, signed by the appropriate department or division head, which states that the spouse's whereabouts cannot be determined; or

(3) Statements by the participant and two other persons which meet the following requirements:

(i) The participant's statement must give the full name of the spouse, declare the participant's inability to locate the spouse, state the last time the spouse's location was known, explain why the spouse's location is not known currently, and describe the good faith efforts the participant has made to locate the spouse in the 90 days before the request for an exception was submitted to the TSP. Examples of attempting to locate the spouse include, but are not limited to, checking with relatives and mutual friends or using telephone directories and directory assistance for the city of the spouse's last known address. Negative statements, such as, ''I have not seen nor heard from him,'' or ''I have not had contact with her,'' are not sufficient.

(ii) The statements from two other persons must support the participant's statement that the participant has made attempts within the preceding 90 days to locate the spouse and that the participant does not know the spouse's whereabouts.

(iii) All statements must be signed and dated and must include the following certification: ''I understand that a false statement or willful misrepresentation is punishable under Federal law (18 U.S.C. 1001) by a fine or imprisonment or both.''.

(b) A withdrawal election received within 90 days of an approved exception may be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

(c) The TSP, in its discretion, may require a participant to provide additional information before granting a waiver. The TSP may use any of the information provided to conduct its own search for the spouse.

§ 1650.64 Executive Director's exception to spousal consent requirement.

(a) Whenever this subpart requires the consent of a spouse of a FERS or uniformed services participant to a loan or withdrawal or a waiver of the right to a survivor annuity, an exception to this requirement may be granted if the participant establishes to the satisfaction of the Executive Director that:

(1) The spouse's whereabouts cannot be determined in accordance with the provisions of § 1650.64; or

(2) Due to exceptional circumstances, requiring the spouse's signature would be inappropriate.

(i) An exception to the requirement for a spouse's signature may be granted based on exceptional circumstances only when the participant presents a court order which contains a finding or a recitation of exceptional circumstances regarding the spouse which would warrant an exception to the signature requirement.

(ii) Exceptional circumstances are narrowly construed, but are exemplified by a court order or government agency determination that:

(A) Indicates that the spouse and the participant have been maintaining separate residences with no financial relationship for three or more years;

(B) Indicates that the spouse abandoned the participant, but for religious or similarly compelling reasons, the parties chose not to divorce; or

(C) Expressly states that the participant may obtain a loan from his or her TSP account or withdraw his or her Thrift Savings Plan account balance notwithstanding the absence of the spouse's signature.

(b) A post-employment withdrawal election or an in-service withdrawal request received within 90 days of an approved exception will be accepted by the TSP so long as the spouse named on the form is the spouse for whom the exception has been approved.

PART 1651—DEATH BENEFITS

39. The authority citation for part 1651 is revised to read as follows:

Authority: 5 U.S.C. 8424(d), 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

40. Section 1651.1 is revised to read as follows:

§ 1651.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this subpart:

Death benefit means the portion of a deceased participant's account that is payable under FERSA's order of precedence.

Domicile means the participant's place of residence for purposes of state income tax liability.

Order of precedence means the priority of entitlement to a TSP death benefit specified in 5 U.S.C. 8424(d).

TIN means a taxpayer identification number. A TIN may be a Social Security number (SSN), an employer identification number (EIN), or an individual taxpayer identification number (ITIN).

41. Section 1651.2 is revised to read as follows:

§ 1651.2 Entitlement to funds in a deceased participant's account.

(a) *Death benefits.* Except as provided in paragraphs (b), (c), and (d) of this section, if the TSP receives notice that a participant has died, the funds in his or her account will be paid as a death benefit to the individual or individuals surviving the participant, in the following order of precedence:

(1) To the beneficiary or beneficiaries designated by the participant on a TSP designation of beneficiary form that has been properly completed and filed in accordance with § 1651.3 and the instructions on the form;

(2) If there is no designated beneficiary, to the spouse of the participant in accordance with § 1651.5;

(3) If there are no beneficiaries or persons as described in paragraphs (a)(1) and (a)(2) of this section, to the child or children of the participant and descendants of deceased children by representation in accordance with § 1651.6;

(4) If there are no beneficiaries or persons as described in paragraphs (a)(1) through (a)(3) of this section, to the parents of the participant in equal shares or entirely to the surviving parent in accordance with § 1651.7;

(5) If there are no beneficiaries or persons as described in paragraphs (a)(1) through (a)(4) of this section, to the duly appointed executor or administrator of the estate of the participant in accordance with § 1651.8; or

(6) If there are no beneficiaries or persons as described in paragraphs (a)(1) through (a)(5) of this section, to the next of kin of the participant who is or are entitled under the laws of the state of the participant's domicile on the date of the participant's death in accordance with § 1651.9.

(b) *Post-employment withdrawal request.* If the TSP receives notice that a participant has died, a pending post-employment withdrawal request will be given effect or cancelled as follows:

(1) *Single payment.* The TSP will give effect to a request by the participant to withdraw his or her account as a single payment. The funds designated for payment to the participant will be distributed as a single payment to the deceased participant (to become the property of his or her estate); funds designated for transfer to an eligible employer plan or traditional IRA will be

transferred to the designated eligible employer plan or traditional IRA.

(2) *Monthly payments.* The TSP will cancel a request by a participant to withdraw his or her account in monthly payments. Any funds not already distributed when the TSP receives notice of the participant's death will be paid as a death benefit in accordance with paragraph (a) of this section.

(3) *Annuity.* The TSP will cancel a request by the participant to withdraw his or her account in the form of an annuity. The TSP will also cancel an annuity purchase made on or after the participant's date of death but before annuity payments have begun, and the annuity vendor will return the funds to the TSP. In both cases, the funds designated by the participant for the purchase of the annuity will be paid as described:

(i) If the participant requested a single life annuity with no cash refund or 10-year certain feature, the TSP will pay the funds as a death benefit in accordance with paragraph (a) of this section.

(ii) If the participant requested a single life annuity with a cash refund or 10-year certain feature, the TSP will pay the funds:

(A) As a death benefit to the beneficiary or beneficiaries designated by the participant on the annuity portion of a withdrawal request, Form TSP–70 or Form TSP–U–70; or

(B) As a death benefit in accordance with paragraph (a) of this section if no beneficiary designated on the withdrawal request survives the participant.

(iii) If the participant requested a joint life annuity without additional features, the TSP will pay the funds:

(A) As a death benefit to the joint life annuitant if he or she survives the participant; or

(B) As a death benefit in accordance with paragraph (a) of this section if the joint life annuitant does not survive the participant.

(iv) If the participant requested a joint life annuity with a cash refund or 10-year certain feature, the TSP will pay the funds:

(A) As a death benefit to the joint life annuitant if he or she survives the participant;

(B) As a death benefit to the beneficiary or beneficiaries designated by the participant on the annuity portion of Form TSP–70 or Form TSP–U–70, if the joint life annuitant does not survive the participant; or

(C) As a death benefit in accordance with paragraph (a) of this section if neither the joint life annuitant nor any designated beneficiary survives the participant.

(v) If a participant dies after an annuity has been purchased, the annuity vendor will make or stop the payments in accordance with the annuity method selected.

(c) *In-service withdrawal request.* If the TSP receives notice that a participant has died, a pending in-service withdrawal request will be given effect. The funds designated for the in-service withdrawal will be paid as a single payment to the deceased participant (to become the property of his or her estate); funds designated for transfer to an eligible employer plan or traditional IRA will be transferred to the designated eligible employer plan or traditional IRA.

(d) *Loans.* If the TSP receives notice that a participant has died, a pending loan disbursement will be cancelled and the funds designated for the loan will be distributed as a death benefit in accordance with paragraph (a) of this section. If a TSP loan has been disbursed, the funds cannot be returned to the TSP and a taxable distribution to the participant will be declared in accordance with 5 CFR 1655.15.

(e) *Investment of a TSP account upon notice of death.* If a participant dies with any portion of his or her TSP account in an investment fund other than the G Fund, the TSP will transfer the entire account into the G Fund after it receives written notice of the participant's death. The account will accrue earnings at the G Fund rate in accordance with 5 CFR part 1645 until it is paid under this part.

42. Section 1651.14 is amended by revising paragraph (f) to read as follows:

§ 1651.14 How payment is made.

* * * * *

(f) *Payment to trust.* If payment is to a trust, the payment will be made payable to the trust and mailed in care of the trustee. A TIN must be provided for the trust.

43. Section 1651.17 is revised to read as follows:

§ 1651.17 Disclaimer of benefits.

(a) *Right to disclaim.* The beneficiary of a TSP account may disclaim his or her right to receive all or part of a TSP death benefit. If the disclaimant is a minor, the disclaimer must be signed by the parent or guardian of the minor.

(b) *Valid disclaimer.* The disclaimer must expressly state that the beneficiary is disclaiming his or her right to receive either all or a stated percentage of the death benefit payable from the TSP account of the named participant and must be:

(1) Submitted in writing;

(2) Signed by the person (or legal representative) disclaiming the benefit; and

(3) Received before the TSP pays the death benefit.

(c) *Invalid disclaimer.* A disclaimer is invalid if it is revocable or directs to whom the disclaimed benefit should be paid.

(d) *Disclaimer effect.* The disclaimed share will be paid as though the beneficiary predeceased the participant, according to the rules set forth in § 1651.10.

44. Part 1653 is revised to read as follows:

PART 1653—COURT ORDERS AND LEGAL PROCESSES AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

Subpart A—Retirement Benefits Court Orders

Subpart B—Legal Process for the Enforcement of a Participant's Legal Obligations to Pay Child Support or Alimony Currently

Subpart C—Child Abuse Court Orders

Authority: 5 U.S.C. 8435, 8436(b), 8437(e)(3), 8467, 8474(b)(5) and 8474(c)(1).

Subpart A—Retirement Benefits Court Orders

§ 1653.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this subpart:

Court means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court as defined by 25 U.S.C. 1301(3).

Effective date of a court order means the date it was entered by the clerk of the court or, if the order does not show a date entered, the date it was filed by the clerk of the court or, if the order does not contain a date entered or a date filed, the date it was signed by the judge.

Retirement benefits court order or *order* means a court decree of divorce, annulment or legal separation, or a court order or court-approved property settlement agreement incident to such a decree. Orders may be issued at any stage of a divorce, annulment, or legal separation proceeding.

§ 1653.2 Qualifying retirement benefits court orders.

(a) To be qualifying, and thus enforceable against the TSP, a retirement benefits court order must meet the following requirements:

(1) The order must expressly relate to the Thrift Savings Plan account of a TSP participant. This means that:

(i) The order must expressly refer to the ''Thrift Savings Plan'' or describe the TSP in such a way that it cannot be confused with other Federal Government retirement benefits or non-Federal retirement benefits;

(ii) The order must be written in terms appropriate to a defined contribution plan rather than a defined benefit plan. For example, it should generally refer to the participant's TSP account or TSP account balance rather than a benefit formula or the participant's eventual benefits; and

(iii) If the participant has a civilian TSP account and a uniformed services TSP account, the order must expressly identify the account to which it relates.

(2) The order must either require the TSP to freeze the participant's account to preserve the *status quo* pending final resolution of the parties' rights to the participant's TSP account, or to make a payment from the participant's account to a permissible payee;

(3) If the order requires a payment from the participant's account, the award must be for:

(i) A specific dollar amount;

(ii) A stated percentage or fraction of the account;

(iii) A portion of the account to be calculated by applying a formula that yields a mathematically possible result. All of the variables in the formula must have values that are readily ascertainable from the face of the order or from TSP records; or

(iv) A survivor annuity as provided in 5 U.S.C. 8435(d).

(4) A court order can only require a payment to:

(i) Current or former spouses of the participant;

(ii) Attorneys of current or former spouses of a participant (as fees);

(iii) Dependents of the participant; and

(iv) Attorneys of dependents of the participant (as fees).

(b) The following retirement benefits court orders are not qualifying and thus are not enforceable against the TSP:

(1) An order relating to a TSP account that has been closed;

(2) An order relating to a TSP account that contains only nonvested money, unless the money will become vested within 30 days of the date the TSP receives the order if the participant were to remain in Federal service;

(3) An order requiring the return to the TSP of money that was properly paid pursuant to an earlier court order;

(4) An order requiring the TSP to make a payment in the future, unless the present value of the payee's entitlement can be calculated, in which case the TSP will make the payment currently; and

(5) An order that does not specify the account to which the order applies, if the participant has both a civilian TSP account and a uniformed services TSP account.

§ 1653.3 Processing retirement benefits court orders.

(a) The payment of a retirement benefits court order from the TSP is governed solely by FERSA and by the terms of this subpart. The TSP will honor retirement benefits court orders properly issued by a court (as defined in § 1653.1). However, those courts have no jurisdiction over the TSP and the TSP cannot be made a party to the underlying domestic relations proceedings.

(b) The TSP will review a retirement benefits court order to determine whether it is enforceable against the TSP only after the TSP has received a complete copy of the document. Receipt by an employing agency or any other agency of the Government does not constitute receipt by the TSP. Retirement benefits court orders should be submitted to the TSP record keeper at the following address: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana, 70161–1500. Receipt by the TSP record keeper is considered receipt by the TSP. To be complete, a court order must contain all pages and attachments; it must also provide (or be accompanied by a document that provides):

(1) The participant's Social Security number (SSN);

(2) The name and last known mailing address of each payee covered by the order; and

(3) If the current or former spouse of the participant is a payee of the court order and the order requires the payment to be mailed in care of a third party, the order must also provide the SSN of the spouse-payee and the state of legal residence of the spouse-payee.

(c) As soon as practicable after the TSP receives a document that purports to be a qualifying retirement benefits court order, whether or not complete, the participant's account will be frozen. After the account is frozen, no withdrawal or loan disbursements (other than a required minimum distribution pursuant to section 401(a)(9) of the Internal Revenue Code) will be allowed until the account is unfrozen. All other account activity will be permitted.

(d) The following documents do not purport to be qualifying retirement benefits court orders, and accounts of participants to whom such orders relate will not be frozen:

(1) A document that does not indicate on its face (or is not accompanied by a document that establishes) that it has been issued or approved by a court;

(2) A court order relating to a TSP account that has been closed;

(3) A court order dated before June 6, 1986;

(4) A court order that does not award all or any part of the TSP account to someone other than the participant; and

(5) A court order that does not mention retirement benefits.

(e) After the participant's account is frozen, the TSP will review the document further to determine if it is complete; if the document is not complete, the TSP will request a complete document. If a complete copy is not received within 30 days of that request, the account will be unfrozen and no further action will be taken with respect to the document.

(f) The TSP will review a complete copy of an order to determine whether it is a qualifying retirement benefits court order as described in § 1653.2. The TSP will mail a decision letter to all parties containing the following information:

(1) A determination regarding whether the court order is qualifying;

(2) A statement of the applicable statutes and regulations;

(3) An explanation of the effect the court order has on the participant's TSP account; and

(4) If the qualifying order requires payment, the letter will provide:

(i) An explanation of how the payment will be calculated and an estimated amount of payment;

(ii) The anticipated date of payment;

(iii) Tax information and income tax withholding forms to the person responsible for paying Federal income tax on the payment;

(iv) Information and the form needed to transfer the payment to an eligible

employer plan or traditional IRA (if the payee is the current or former spouse of the participant); and

(v) Information and the form needed to receive the payment through an electronic funds transfer (EFT).

(g) The TSP decision letter is a final determination of the parties' rights in the account. There is no administrative appeal from the TSP decision.

(h) An account frozen under this section will be unfrozen as follows:

(1) If the account was frozen upon receipt of an incomplete order, the account will be unfrozen if a complete order is not received within 30 days of the date of the request described in paragraph (e) of this section;

(2) If the account was frozen in response to an order issued to preserve the *status quo* pending final resolution of the parties' rights to the participant's TSP account, the account will be unfrozen if the TSP receives a court order that vacates or supersedes the previous order (unless the order vacating or superseding the order itself qualifies to place a freeze on the account). A court order that purports to require a payment from the TSP supersedes an order issued to preserve the *status quo,* even if it does not qualify to require a payment from the TSP;

(3) If the account was frozen in response to an order purporting to require a payment from the TSP, the freeze will be lifted:

(i) Once payment is made, if the court order is qualifying; or

(ii) Forty-five (45) days after the date of the TSP decision letter if the court order is not qualifying. The 45-day period will be terminated, and the account will be unfrozen, if both parties submit to the TSP a written request for such a termination.

(i) The TSP will hold in abeyance the processing of a court-ordered payment if the TSP is notified in writing that the underlying court order has been appealed, and that the effect of the filing of the appeal is to stay the enforceability of the order.

(1) In the notification, the TSP must be provided with proper documentation of the appeal and citations to legal authority which address the effect of the appeal on the enforceability of the underlying court order.

(i) If the TSP receives proper documentation and citations to legal authority which demonstrate that the underlying court order is not enforceable, the TSP will inform the parties that the payment will not occur until resolution of the appeal, and the account will remain frozen for loans and withdrawals.

(ii) In the absence of proper documentation and citations to legal authority, the TSP will presume that the provisions relating to the TSP in the court order remain valid and will proceed with the payment process.

(2) The TSP must be notified in writing of the disposition of the appeal before the freeze will be removed from the participant's account or a payment will be made. The notification must include a complete copy of an order from the appellate court explaining the effect of the appeal on the participant's account.

(j) Multiple qualifying court orders relating to the same TSP account and received by the TSP will be processed as follows:

(1) If the orders make awards to the same payee or payees and do not indicate that the awards are cumulative, the TSP will only honor the order bearing the latest effective date.

(2) If the orders relate to different former spouses of the participant and award survivor annuities, the TSP will honor them in the order of their effective dates.

(3) If the orders relate to different payees and award fixed dollar amounts, percentages or fractions of an account, or portions of an account calculated by the application of formulae, the orders will be honored:

(i) In the order of their receipt by the TSP, if received by the TSP on different days; or

(ii) In the order of their effective dates, if received by the TSP on the same day.

(4) In all other cases, the TSP will honor multiple qualifying court orders relating to the same TSP account in the order of their receipt by the TSP.

§ 1653.4 Calculating entitlements.

(a) For purposes of computing the amount of a payee's entitlement under this section, a participant's TSP account balance will include any loan balance outstanding as of the date used for calculating the payee's entitlement, unless the court order provides otherwise.

(b) If the court order awards a percentage or fraction of an account as of a specific date, the payee's entitlement will be calculated based on the account balance as of that date. If the date specified in the order is not a business day, the TSP will use the participant's account balance as of the last preceding business day.

(c) If the court order awards a percentage or fraction of an account but does not contain a specific date as of which to apply that percentage or fraction, the TSP will use the effective date of the order.

(d) If the court order awards a specific dollar amount, the payee's entitlement will be the lesser of:

(1) The dollar amount stated in the court order; or

(2) The vested account balance as of the date specified in the court order as the effective date of the award (or, if no date is specified, the effective date of the order).

(e) If a court order describes a payee's entitlement in terms of a fixed dollar amount and a percentage or fraction of the account, the TSP will pay the fixed dollar amount, even if the percentage or fraction, when applied to the account balance, would yield a different result.

(f) The payee's entitlement will be credited with TSP investment earnings as described:

(1) The entitlement calculated under this section will not be credited with TSP investment earnings unless the court order specifically provides otherwise.

(2) If earnings are awarded and a rate is specified, the rate must be expressed as an annual percentage rate or as a per diem dollar amount added to the payee's entitlement.

(3) If earnings are awarded and the rate is not specified, the TSP will credit the payee's entitlement with the rate of return for the G Fund.

(4) Earnings at the G Fund rate will accrue on a monthly basis through August 31, 2002, beginning with the month following the entitlement date; thereafter, G Fund earnings will accrue on a daily basis, beginning with the business day following the date used for calculating the payee's entitlement (or beginning September 1, 2002, if interest or earnings commence before September 1, 2002) and ending 2 days before payment is made.

(g) The TSP will estimate the amount of a payee's entitlement when it prepares the court order decision letter and will recalculate the entitlement at the time of payment. The recalculation may differ from the initial estimation because:

(1) The estimation of the payee's entitlement includes both vested and nonvested amounts in the participant's account. If, at the time of payment, the nonvested portion of the account has not become vested, the recalculated entitlement will apply only to the participant's vested account balance; and

(2) After the estimate of the payee's entitlement is prepared, the TSP may process account transactions that have an effective date on or before the date used to compute the payee's

entitlement. Those transactions will be included when the payee's entitlement is recalculated at the time of payment.

§ 1653.5 Payment.

(a) Payment pursuant to a qualifying retirement benefits court order ordinarily will be made 60 days after the date of the TSP decision letter. This is intended to permit the payee sufficient time to consider decisions about tax withholding, payment by EFT, and transfer, if applicable, under paragraph (e) of this section. An earlier distribution may be made as follows:

(1) If the payee is the current or former spouse of the participant, the payee can request to receive the payment sooner than 60 days by making a tax withholding election, by requesting a payment by EFT, or by requesting a transfer described in paragraph (e)(1) of this section. The TSP decision letter will provide the forms a payee can use to request an earlier disbursement.

(2) If the payee is someone other than the current or former spouse of the participant, the participant can request a disbursement sooner than 60 days by making the tax withholding election described in paragraph (e)(2) of this section (on forms provided to the participant with the TSP decision letter).

(3) If the court order makes an award to multiple payees, a disbursement may be made earlier than 60 days only if requests for expedited payment are received from all of the payees.

(4) In no event will payment be made earlier than 31 days after the date of the TSP decision letter.

(b) In no case will payment exceed the participant's vested account balance, minus any outstanding loan balance.

(c) The entire amount of a court order payee's entitlement must be disbursed at one time. A series of payments will not be made, even if the court order provides for such a method of payment. A payment pursuant to a court order extinguishes all rights to any further payment under that order, even if the entire amount of the entitlement cannot be paid. Any further award must be contained in a separate court order.

(d) Payment will be made *pro rata* from all TSP investment funds in which the account is invested, based on the balance in each fund on the date payment is made, and from both tax-deferred and tax-exempt balances, if any. The TSP will not honor provisions of a court order which require payment to be made from specific investment funds or contribution sources. A court order may, however, specify a particular payment from the tax-exempt balance of a uniformed services TSP account.

(e) Payment will be made only to the person or persons specified in the court order.

(1) If payment is made to the current or former spouse of the participant, the distribution will be reported to the Internal Revenue Service (IRS) as income to the payee.

(i) A current or former spouse of a participant may request that the TSP transfer all or a portion of the payment to an eligible employer plan or traditional IRA. A retirement benefits court order cannot prevent the TSP from providing this transfer option to a current or former spouse of a participant.

(ii) Any amount that is not so transferred will be distributed to the payee. That distribution will be subject to mandatory Federal income tax withholding. The payee may elect to have an additional amount withheld by filing with the TSP the forms provided to the payee with the decision letter.

(iii) Any distribution directly to the payee will be made under the following rules:

(A) If the court order specifies a third-party mailing address for the payment, the TSP will mail to the address specified any portion of the payment which is not transferred to an eligible employer plan or traditional IRA. That portion will be disbursed in the form of a United States Treasury check made payable solely to the court order payee, and mailed in care of the third party addressee.

(B) If the court order does not specify a third party addressee, the payee can choose to receive the distribution by United States Treasury check or by electronic funds transfer (EFT) to a checking or savings account at a financial institution.

(2) If the payment is made to anyone other than the current or former spouse of the participant, the following rules apply:

(i) The payment is taxable to the participant and is subject to Federal income tax withholding. The participant can elect the amount to be withheld by filing with the TSP the forms provided to the participant with the decision letter. If the participant does not make a withholding election, the TSP will withhold 10 percent from the payment. The tax withholding will be taken from the payee's entitlement and the gross amount of the payment (*i.e.,* the net payment distributed to the payee plus the amount withheld from the payment for taxes) will be reported to the IRS as income to the participant.

(ii) The payment will be made under the same rules described in paragraph (e)(1)(iii) of this section.

(f) Payment will not be made jointly to two or more persons. If the court order requires payments to more than one person, the order must separately indicate the amount to be paid to each.

(g) If there are insufficient funds to pay each court order payee, payment will be made as follows:

(1) If the order specifies an order of precedence for the payments, the TSP will honor it.

(2) If the order does not specify an order of precedence for the payments, the TSP will pay a current or former spouse first, a dependent second, and an attorney third.

(h) If the payee dies before a payment is disbursed, payment will be made to the estate of the payee, unless otherwise specified by the court order. A distribution to the estate of a deceased court order payee will be reported as income to the decedent's estate. If the participant dies before payment is made, the order will be honored so long as it is submitted to the TSP before the TSP account has been closed.

(i) If the parties to a divorce or annulment have remarried each other, or a legal separation is terminated, a new court order will be required to prevent payment pursuant to a previously submitted qualifying retirement benefits court order.

(j) Payment to a person (including the estate of the payee) pursuant to a qualifying retirement benefits court order made in accordance with this subpart bars recovery by any other person claiming entitlement to the payment.

Subpart B—Legal Process for the Enforcement of a Participant's Legal Obligations To Pay Child Support or Alimony Currently

§ 1653.11 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1600.1.

(b) As used in this subpart:

Alimony means the payment of funds for the support and maintenance of a spouse or former spouse. Alimony includes separate maintenance, alimony *pendente lite,* maintenance, and spousal support. Alimony can also include attorney fees, interest, and court costs, but only if these items are expressly made recoverable by qualifying legal process, as described in § 1653.12.

Child support means payment of funds for the support and maintenance of a child or children of the participant. Child support includes payments to

provide for health care, education, recreation, clothing, or to meet other specific needs of a child or children. Child support can also include attorney fees, interest, and court costs, but only if these items are expressly made recoverable by qualifying legal process, as described in § 1653.12.

Competent authority means a court or an administrative agency of competent jurisdiction in any State, territory or possession of the United States; a court or administrative agency of competent jurisdiction in any foreign country with which the United States has entered into an agreement that requires the United States to honor the process; or an authorized official pursuant to an order of such a court or an administrative agency of competent jurisdiction pursuant to state or local law.

Legal process means a writ, order, summons, or other similar process in the nature of a garnishment which is brought to enforce a participant's legal obligations to pay child support or alimony currently.

§ 1653.12 Qualifying legal processes.

(a) The TSP will only honor the terms of a legal process that is qualifying under paragraph (b) of this section.

(b) A legal process must meet each of the following requirements to be considered qualifying:

(1) The legal process must have been issued by a competent authority;

(2) The legal process must expressly relate to the Thrift Savings Plan account of a TSP participant, as described in § 1653.2(a)(1);

(3) The legal process must require the TSP to:

(i) Pay a stated dollar amount from a participant's TSP account; or

(ii) Freeze the participant's account in anticipation of an order to pay from the account.

(c) The following legal processes are not qualifying:

(1) A legal process relating to a TSP account that has been closed;

(2) A legal process relating to a TSP account that contains only nonvested money, unless the money will become vested within 30 days of the date the TSP receives the order if the participant were to remain in Federal service;

(3) A legal process requiring the return to the TSP of money that was properly paid pursuant to an earlier legal process;

(4) A legal process requiring the TSP to make a payment in the future; and

(5) A legal process requiring a series of payments.

§ 1653.13 Processing legal processes.

(a) The payment of legal processes from the TSP is governed solely by the Federal Employees' Retirement System Act, 5 U.S.C. chapter 84, and by the terms of this subpart. Although the TSP will honor legal processes properly issued by a competent authority, those entities have no jurisdiction over the TSP and the TSP cannot be made a party to the underlying proceedings.

(b) The TSP will review a legal process to determine whether it is enforceable against the TSP only after the TSP has received a complete copy of the document. Receipt by an employing agency or any other agency of the Government does not constitute receipt by the TSP. Legal processes should be submitted to the TSP record keeper at the following address: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, LA 70161–1500. Receipt by the TSP record keeper is considered receipt by the TSP. To be complete, a legal process must contain all pages and attachments; it must also provide (or be accompanied by a document that provides):

(1) The participant's Social Security number (SSN);

(2) The name and last known mailing address of each payee covered under the order; and

(3) If the current or former spouse of the participant is a payee of the court order and the order requires the payment to be mailed in care of a third party, the order must also provide the SSN of the spouse-payee and the state of legal residence of the spouse-payee.

(c) As soon as practicable after the TSP receives a document that purports to be a qualifying legal process, whether or not complete, the participant's account will be frozen. After the account is frozen, no withdrawal or loan disbursements will be allowed until the account is unfrozen. All other account activity will be permitted, including contributions, loan repayments, adjustments, contribution allocations and interfund transfers.

(d) The following documents will not be treated as purporting to be a qualifying legal processes, and accounts of participants to whom such orders relate will not be frozen:

(1) A document that does not indicate on its face (or accompany a document that establishes) that it has been issued by a competent authority;

(2) A legal process relating to a TSP account that has been closed; and

(3) A legal process that does not relate either to the TSP or to the participant's retirement benefits.

(e) After the participant's account is frozen, the TSP will review the document further to determine if it is complete; if the document is not complete, the TSP will request a complete document. If a complete copy is not received by the TSP within 30 days of that request, the account will be unfrozen and no further action will be taken with respect to the document.

(f) As soon as practicable after receipt of a complete copy of a legal process, the TSP will review it to determine whether it is a qualifying legal process as described in § 1653.12. The TSP will mail a decision letter to all parties containing the same information described at § 1653.3(f).

(g) The TSP decision letter is final. There is no administrative appeal from the TSP decision.

(h) An account frozen under this section will be unfrozen as follows:

(1) If a complete document has not been received within 30 days of the date of a request described in paragraph (e) of this section;

(2) If the account was frozen pursuant to a legal process requiring the TSP to freeze the participant's account in anticipation of an order to pay from the account, the account will be unfrozen if any one of the following events occurs:

(i) As soon as practicable after the TSP receives a complete copy of an order vacating or superseding the preliminary order (unless the order vacating or superseding the preliminary order qualifies to place a freeze on the account);

(ii) Upon payment pursuant to the order to pay from the account, if the TSP determines that the order is qualifying; or

(iii) As soon as practicable after the TSP issues a decision letter informing the parties that the order to pay from the account is not a qualifying legal process;

(3) If the account was frozen after the TSP received a document that purports to be a legal process requiring payment from the participant's account, the account will be unfrozen:

(i) Upon payment pursuant to a qualifying legal process; or

(ii) As soon as practicable after the TSP informs the parties that the document is not a qualifying legal process.

(i) The TSP will hold in abeyance the processing of a payment required by legal process if the TSP is notified in writing that the legal process has been appealed, and that the effect of the filing of the appeal is to stay the enforceability of the legal process. The notification must be accompanied by the documentation and citations to legal authority described at § 1653.3(i).

(j) Multiple qualifying legal processes relating to the same TSP account and received by the TSP will be processed as follows:

(1) If the legal processes make awards to the same payee or payees and do not indicate that the awards are cumulative, the TSP will only honor the legal process bearing the latest effective date.

(2) If the legal processes relate to different payees, the legal process will be honored:

(i) In the order of their receipt by the TSP, if received by the TSP on different days; or

(ii) In the order of their effective dates, if received by the TSP on the same day.

§ 1653.14 Calculating entitlements.

A qualifying legal process can only require the payment of a specified dollar amount from the TSP. Payment pursuant to a qualifying legal process will be calculated in accordance with § 1653.4(a), (d), (f) and (g).

§ 1653.15 Payment.

Payment pursuant to a qualifying legal process will be made in accordance with § 1653.5.

Subpart C—Child Abuse Court Orders

§ 1653.21 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1600.1.

(b) As used in this subpart:

Child means an individual under 18 years of age.

Judgment against a participant for physically, sexually, or emotionally abusing a child means any legal claim perfected through a final enforceable judgment which is based in whole or in part upon the physical, sexual, or emotional abuse of a child, whether or not that abuse is accompanied by other actionable wrongdoing, such as sexual exploitation or gross negligence.

§ 1653.22 Purpose.

Under 5 U.S.C. 8437(e)(3) and 8467(a)(2), the TSP will honor a court order or other similar process in the nature of a garnishment that is brought to enforce a judgment against a participant for physically, sexually, or emotionally abusing a child.

§ 1653.23 Processing and payment.

To the maximum extent consistent with sections 8437(e)(3) and 8467(a)(2), child abuse court orders will be processed by the TSP under the procedures described in subparts A and B of this part.

45. Part 1655 is revised to read as follows:

PART 1655—LOAN PROGRAM

Sec.

Authority: 5 U.S.C. 8433(g) and 8474.

§ 1655.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

Amortization means the reduction in a loan by periodic payments of principal and interest according to a schedule of payments.

Date of application means the day on which the TSP record keeper receives the loan application, either electronically on the TSP Web site or on Form TSP–20 or Form TSP–U–20.

General purpose loan means any TSP loan other than a loan for the purchase or construction of a primary residence.

Guaranteed funds means a cashier's check, money order, certified check (i.e., a check certified by the financial institution on which it is drawn), cashier's draft, or treasurer's check from a credit union.

Loan issue date means the date on which the TSP record keeper authorizes disbursement of the funds from the participant's account for the loan amount.

Loan repayment period means the time over which payments that are required to repay a loan in full are scheduled.

Principal or *principal amount* means the amount borrowed by a participant from his or her individual account, or, after reamortization, the amount financed.

Reamortization means the recalculation of periodic payments of principal and interest.

Residential loan means a TSP loan for the purchase or construction of a primary residence.

Taxable distribution means the amount of outstanding principal and interest on a loan which must be reported to the Internal Revenue Service as taxable income as a result of the failure of a participant to repay a loan in full, according to the terms of the loan agreement.

§ 1655.2 Eligibility for loans.

A participant who is eligible to contribute to the TSP and who is in pay status is eligible to apply for a loan from his or her TSP account. Only a participant who has at least $1,000 in employee contributions and attributable earnings in his or her account may receive a loan (subject to the other terms and conditions set forth in this part). A participant who is separated from Government service may not receive a loan from his or her TSP account.

§ 1655.3 Information concerning the cost of a loan.

Information concerning the cost of a loan is provided in the booklet TSP Loan Program (available on the TSP Web site, from the participant's personnel office or service, or from the TSP record keeper). From this information, a participant can determine the effects of a loan on his or her account balance and can compare the cost of a loan to that of other sources of financing.

§ 1655.4 Number of loans.

A participant may have no more than two loans outstanding from his or her TSP account at any time. Only one of the two outstanding loans may be a residential loan. A participant with both a civilian TSP account and a uniformed services TSP account may have two outstanding loans from each account.

§ 1655.5 Loan repayment period.

(a) *Minimum.* The minimum repayment period a participant may request for a loan is one year of scheduled payments.

(b) *Maximum.* The maximum repayment period a participant may request for a general purpose loan is five years of scheduled payments. The maximum repayment period a participant may request for a residential loan is 15 years of scheduled payments.

§ 1655.6 Amount of loan.

(a) *Minimum amount.* The initial principal amount of any loan may not be less than $1,000.

(b) *Maximum amount.* The principal amount of a new loan must be less than or equal to the smallest of the following:

(1) The portion of the participant's individual account balance that is attributable to employee contributions and attributable earnings (not including any outstanding loan principal);

(2) 50 percent of the participant's vested account balance (including any outstanding loan balance) or $10,000, whichever is greater, minus any outstanding loan balance; or

(3) $50,000 minus the participant's highest outstanding loan balance (if any) during the last 12 months.

(c) If a participant has both a civilian TSP account and a uniformed services TSP account, the maximum loan amount available will be based on a calculation that takes into consideration the account balances and outstanding loan balances for both accounts.

§ 1655.7 Interest rate.

(a) Loans will bear interest at the G Fund rate in effect on the date the TSP record keeper receives the paper application or on the date the request is entered on the TSP Web site.

(b) The interest rate calculated under this section remains fixed until the loan is repaid, unless the participant informs the TSP record keeper that he or she entered into active duty military service and requests that the interest rate on a loan issued before entry into active duty military service be reduced to an annual rate of 6 percent for the period of such service. The participant must provide the record keeper with the beginning and ending dates of active duty military service.

§ 1655.8 Quarterly statements.

Information relating to any outstanding loan will be included on the quarterly participant statements.

§ 1655.9 Effect of loans on individual account.

(a) The amount borrowed will be removed from the participant's account when the loan is disbursed. Consequently, these funds will no longer generate earnings.

(b) The loan principal will be disbursed from that portion of the account represented by employee contributions and attributable earnings, *pro rata* from each investment fund in which the account is invested and *pro rata* from tax-deferred and tax-exempt balances.

(c) Loan payments, including both principal and interest, will be credited to the participant's individual account. Loan payments will be credited to the appropriate investment fund in accordance with the participant's most recent contribution allocation.

§ 1655.10 Loan application process.

(a) Any participant may apply for a loan by submitting a completed loan application (Form TSP–20 or Form TSP–U–20) to the TSP record keeper.

(b) The following participants may also apply for and complete a loan request on the TSP Web site:

(1) FERS participants or members of the uniformed services requesting a general purpose loan if they are (i) unmarried, or (ii) married and have been granted an exception to the spousal requirements described in § 1655.18.

(2) CSRS participants requesting a general purpose loan if they are (i) unmarried, (ii) married and provide a current address for their spouse, or (iii) married and have been granted an exception to the spousal requirements described in § 1655.18.

(c) Persons not described in paragraph (b) of this section may use the TSP Web site to submit a loan application and obtain a loan agreement, but must complete the process by submitting the resulting loan agreement and any related documentation on paper.

§ 1655.11 Loan acceptance.

The TSP record keeper will reject a loan application if:

(a) The participant is not qualified to apply for a loan under § 1655.2 or has failed to provide all required information on the loan application;

(b) The participant has the maximum number of loans outstanding or, if the application is for a residential loan, the participant has a residential loan outstanding from the same account;

(c) The participant has a pending loan agreement or in-service withdrawal request;

(d) The amount of the requested loan is less than the minimum amount set forth in § 1655.6(a);

(e) A hold has been placed on the account pursuant to 5 CFR 1653.3(c); or

(f) The participant has received a taxable loan distribution from the TSP within the 12-consecutive-month period preceding the date of the application, unless the taxable distribution was the result of the participant's failure to repay the loan upon his or her separation from Government service.

§ 1655.12 Loan agreement.

(a) Upon determining that a loan application meets the requirements of this part, the TSP record keeper will provide the participant with the terms and conditions of the loan, as follows:

(1) If the participant submits a paper loan application, the TSP record keeper will mail the loan agreement (Form TSP–21–G, TSP–U–21–G, TSP–21–R, or TSP–U–21–R, as applicable) to the participant and other information, as appropriate.

(2) If a loan request is completed on the ThriftLine or the TSP Web site, the TSP record keeper will mail the participant a confirmation that states the terms and conditions of the loan.

(3) If the participant initiates a loan request on the TSP Web site which cannot be completed on the Web site, the participant must print the partially completed loan agreement directly from the Web site, provide any missing information (including spouse's signature or documents supporting a residential loan request, if applicable), and submit it to the TSP record keeper.

(b) By signing the loan agreement, either electronically or on the form, the participant agrees to be bound by all of its terms and conditions, agrees to repay the loan by payroll deduction, and certifies, under penalty of perjury, to the truth and completeness of all statements made in the loan application and loan agreement to the best of his or her knowledge.

(c) For loans submitted on paper and those that cannot be completed on the TSP Web site, the TSP record keeper must receive the completed loan agreement (including any required supporting documentation) before the expiration date stated on the loan agreement or the agreement will not be processed.

(d) The signed loan agreement must be accompanied by:

(1) In the case of a residential loan, supporting materials that document the purchase or construction of the residence and the amount requested (as described in § 1655.20); and

(2) Any other information that the Executive Director may require.

(e) A participant may request that the loan be disbursed by direct deposit to a checking or savings account maintained by the participant in a financial institution by properly completing the required information on the loan agreement or on the TSP Web site, if the loan request can be completed on the Web site.

§ 1655.13 Loan approval and issuance.

(a) When the completed loan agreement is signed electronically or returned by the participant to the TSP record keeper, together with any documentation required to be submitted, the loan will be initially approved or denied by the TSP record keeper based upon the requirements of this part, including the following conditions:

(1) The participant has signed the promise to repay the loan, has agreed to repay the loan through payroll deductions, and has certified that the information given is true and complete to the best of the participant's knowledge;

(2) Processing of the loan would not be prohibited by § 1655.19 relating to court orders;

(3) The spouse of a FERS or uniformed services participant has consented to the loan or, if the spouse's whereabouts are unknown or exceptional circumstances make it inappropriate to secure the spouse's consent, an exception to the spousal requirement described in § 1655.18 has been granted;

(4) The spouse of a CSRS participant has been given notice or, if the spouse's whereabouts are unknown, an exception to the spousal requirement described in § 1655.18 has been granted;

(5) When a paper agreement is required, the completed loan agreement, including all required supporting documentation, was received by the TSP record keeper before the expiration date specified on the loan agreement; and

(6) The participant has met any other conditions that the Executive Director may require.

(b) If approved, the loan will be issued unless the TSP record keeper determines that:

(1) The participant's employing agency has reported the participant's death or separation from Government service;

(2) The participant's account balance on the loan issue date does not contain sufficient employee contributions and associated earnings to make a loan of at least $1,000;

(3) A hold on the account is processed before the loan is disbursed; or

(4) A taxable distribution on an outstanding loan is declared before the new loan is issued.

(c) If the loan is otherwise acceptable but the amount available to borrow is less than the requested amount (but is at least $1,000), the loan will be issued in the maximum amount available at the time of the disbursement. In such a case, the periodic payment amount will remain the same and the loan term may be shortened.

(d) A loan is considered to have been made to a participant on the loan issue date.

§ 1655.14 Loan payments.

(a) Loan payments must be made through payroll deduction in accordance with the loan agreement. Once loan payments begin, the employing agency cannot terminate the payroll deductions at the employee's request, unless the TSP instructs it to do so.

(b) The participant may make additional payments by mailing a personal check or guaranteed funds to the TSP record keeper. If the TSP receives a payment that repays the outstanding loan amount and overpays the loan by $10.00 or more, the overpayment will be refunded to the participant. Overpayments of less than $10 will be applied to the participant's account and will not be refunded.

(c) The initial payment on a loan is due on or before the 60th day following the loan issue date.

(d) Subsequent payments are due at regular intervals as prescribed in the loan agreement, or most recent amortization, according to the participant's pay cycle.

(e) If a payment is not made when due, the TSP will notify the participant of the missed payment and the participant must make up the payment in full. If the participant does not make up the payment by the end of the calendar quarter following the calendar quarter in which the payment was missed, the TSP will declare the loan to be a taxable distribution in accordance with § 1655.15. The participant's make-up payment must be in the form of a personal check or guaranteed funds.

(f) Interest will not accrue on the missed payment if the payment is made up by the deadline established in accordance with paragraph (e) of this section. Interest will accrue on the missed payment if the payment is not made up by the deadline and will be included in the calculation of any taxable distribution subsequently declared in accordance with § 1655.15. Interest will also accrue on payments missed while a participant is in nonpay status.

§ 1655.15 Taxable distributions.

(a) The Board may declare any unpaid loan principal, plus unpaid interest, to be a taxable distribution from the Plan if:

(1) A participant is in a confirmed nonpay status for a period of one year or more, has not advised the TSP that he or she is serving on military duty, and payments are not resumed after the participant is notified the loan has been reamortized;

(2) A participant separates from Government service and does not repay the outstanding loan principal and interest in full within the period specified by the notice to the participant from the TSP record keeper explaining the participant's repayment options;

(3) The TSP record keeper advises the participant that there are missing payments and the participant fails to make (by personal check or guaranteed funds) a direct payment of the entire missing amount or repayment in full by the deadline established in accordance with § 1655.14(e);

(4) Any material information provided in accordance with §§ 1655.10, 1655.12, or 1655.18 is found to be false;

(5) With the exception of a loan described in 5 CFR 1620.45, the loan is not repaid in full (including interest due) within five years, in the case of a general purpose loan, or within 15 years, in the case of a residential loan, from the loan issue date;

(6) The participant dies; or

(7) The participant is a debtor in a chapter 13 bankruptcy action and a court order requires that no TSP loan payments may be deducted from the participant's pay.

(b) If a taxable distribution occurs in accordance with paragraph (a) of this section, the Board will notify the participant of the amount and date of the distribution. The Board will report the distribution to the Internal Revenue Service as income for the year in which it occurs. That portion of a loan that represents a uniformed services participant's contributions from combat zone pay will not be included in this calculation.

(c) If a participant dies and a taxable distribution occurs in accordance with paragraph (a) of this section, the Board will notify the participant's estate of the amount and date of the distribution. Neither the estate nor any other person, including a beneficiary, may repay the loan of a deceased participant.

(d) If, because of Board or TSP record keeper error, a TSP loan is declared a taxable distribution under circumstances that make such a declaration inconsistent with this part, or inconsistent with other procedures established by the Board or TSP record keeper in connection with the TSP loan program, the taxable distribution will be reversed. The participant will be provided an opportunity to reinstate loan payments or repay in full the outstanding balance on the loan.

§ 1655.16 Reamortization.

(a) A participant may request reamortization of a loan at any time to change the amount of the payments, unless the loan is in a default status.

(b) Upon reamortization, the new principal balance of the loan will equal the unpaid principal on the date of reamortization plus any interest due on the unpaid principal.

(c) The interest rate on a reamortized loan will be the same as the interest rate on the original loan.

(d) A participant may request reamortization by using the TSP Web site or by contacting a TSPSO participant service representative.

(e) When a participant's pay cycle changes for any reason, he or she should request a reamortization to adjust the scheduled payment to an equivalent amount in the new pay cycle. If the new pay cycle results in fewer payments per year and the participant does not reamortize the loan, the loan may be declared a taxable distribution pursuant to § 1655.15(a)(3).

§ 1655.17 Prepayment.

(a) A participant may repay a loan in full, without a penalty, at any time before the declaration of a taxable distribution under § 1655.15, unless the participant has separated from Government service and has submitted a signed statement that he or she has forfeited the right to repay the loan in full. Repayment in full means receipt by the TSP record keeper of a payment, by personal check or guaranteed funds made payable to the Thrift Savings Plan, of all principal and interest due on the loan.

(b) If a participant returns a loan check to the TSP record keeper, it will be treated as a repayment; however, additional interest may be owed. The loan, even though repaid, will also be taken into account in determining the maximum amount available for future loans, in accordance with § 1655.6(b).

(c) The amount outstanding on a loan can be obtained from the TSP Web site, the ThriftLine, or a TSPSO participant service representative, or by a written request to the TSP record keeper.

§ 1655.18 Spousal rights.

(a) *Spouse of CSRS participant.* (1) Before a loan is disbursed to a CSRS participant, the TSP record keeper will send a notice to the participant's current spouse that the participant has applied for a loan.

(2) A CSRS participant may obtain an exception to the requirement described in paragraph (a)(1) of this section if the participant establishes, to the satisfaction of the Executive Director, that the spouse's whereabouts are unknown as described in paragraph (c) of this section.

(b) *Spouse of FERS or uniformed services participant.* (1) Before a loan agreement is approved for a FERS or uniformed services participant, the spouse must consent to the loan by signing the loan agreement.

(2) A FERS or uniformed services participant may obtain an exception to the requirement described in paragraph (b)(1) of this section if the participant establishes, to the satisfaction of the Executive Director, that:

(i) The spouse's whereabouts are unknown; or

(ii) Exceptional circumstances prevent the participant from obtaining the spouse's consent.

(c) *Exception to spousal requirements.* The procedures for obtaining an exception to the spousal requirements described in paragraphs (a)(1) and (b)(1) of this section are the same as the procedures described in 5 CFR 1650.64 and 1650.65.

(d) *Certification of truthfulness.* (1) By signing the loan application and the loan agreement, electronically or on paper, the participant certifies, under penalty of perjury, that all information provided to the TSP during the loan process is true and complete, including statements concerning the participant's marital status, the spouse's address at the time the application is filed, or the current spouse's consent to the loan.

(2) If the Board receives a written allegation from the spouse that the participant may have misrepresented his or her marital status or the spouse's address (in the case of a CSRS participant), or that the signature of the spouse of a FERS participant was forged, the Board will submit the information or document in question to the spouse and request that he or she state in writing that the information is false or that the spouse's signature was forged. In the event of an alleged forgery, the Board will also request the spouse to provide at least three samples of his or her signature.

(3) If the spouse affirms the allegation, in accordance with the procedure set forth in paragraph (d)(2) of this section, and the loan has been disbursed, the Board will give the participant an opportunity to repay the unpaid loan principal and interest within 60 days. If the loan is repaid during this period, the Board will not investigate the spouse's allegation.

(4) Paragraph (d)(3) of this section will not apply if the participant has received a final divorce decree before the funds are received by the Thrift Savings Plan.

(5) If the unpaid loan principal and interest are not repaid to the Plan in full within the time period provided in paragraph (d)(3) of this section, the Board will conduct an investigation into the allegation. If the participant has received a final divorce decree before the funds are received by the Thrift Savings Plan, the Board will begin its investigation immediately.

(6) If, during its investigation, the Board finds evidence to suggest that the participant misrepresented his or her marital status or spouse's address (in the case of a CSRS participant), or submitted the loan agreement with a forged signature, the Board will refer the case to the Department of Justice for criminal prosecution and, if the participant is still employed, to the Inspector General or other appropriate authority in the participant's employing agency for administrative action.

(7) Upon receipt of an allegation described in paragraph (d)(2) of this section, the participant's account will be frozen and no loan will be permitted until after:

(i) 30 days have elapsed since the participant's spouse was sent a copy of the information or document in question, and no written affirmation of the alleged false information or forgery (together with signature samples, if required) has been received by the Board;

(ii) The loan is repaid pursuant to paragraph (d)(3) of this section;

(iii) The Executive Director concludes that the Board's investigation did not yield persuasive evidence that supports the spouse's allegation;

(iv) The Executive Director has been assured in writing by the spouse that any future request for a loan or withdrawal comports with the applicable requirement of notice or consent; or

(v) The participant is divorced.

§ 1655.19 Effect of court order on loan.

Upon receipt of a document that purports to be a qualifying retirement benefits court order, qualifying legal process relating to a participant's legal obligation to provide child support or to make alimony payments, or a qualifying child abuse order, the participant's TSP account will be frozen. After the account is frozen, no loan will be allowed until the account is unfrozen. The Board's procedures for processing court orders and legal processes are explained in 5 CFR part 1653.

§ 1655.20 Residential loans.

(a) A residential loan will be made only for the purchase or construction of the primary residence of the participant, or for the participant and his or her spouse, and for related purchase costs. The participant must actually bear all or part of the cost of the purchase. If the participant purchases a primary residence with someone other than his or her spouse, only the portion of the purchase costs that is borne by the participant will be considered in making the loan. A residential loan will not be made for the purpose of paying off an existing mortgage or otherwise providing financing for a primary residence purchased more than 2 years before the date of the loan application.

(b) A primary residence must be used by the participant as his or her principal

residence. A primary residence may include a house, a townhouse, a condominium, a share in a cooperative housing corporation, a mobile home, a boat, or a recreational vehicle; a primary residence does not include a second home or vacation home. A participant cannot have more than one primary residence.

(c) Purchase of a primary residence means acquisition of the residence through the exchange of cash or other property or through the total construction of a new residence. A residential loan will not be made for a lease-to-buy option, unless the option to buy is being exercised. Construction of an addition to or the renovation of a residence or the purchase of land only does not constitute the purchase of a primary residence.

(d) Related purchase costs are any costs that are incurred directly as a result of the purchase or construction of a residence and which can be added to the basis of the residence for Federal tax purposes. Points or loan origination fees charged for a loan, whether or not they are treated as part of the basis, are not considered a purchase cost. Real estate taxes cannot be included.

(e) The documentation required for a loan under this section is as follows:

(1) For all purchases, except for construction, a copy of a home purchase contract or a settlement sheet; or

(2) For construction, a home construction contract. If a single home construction contract is unavailable, other contracts, building permits, receipts, assessments, or other documentation that demonstrates the construction of an entire primary residence and expenses in the amount of the loan may be accepted at the discretion of the Executive Director.

(f) The documentation provided under this section must—

(1) Be from a third party;

(2) Show the participant as the purchaser or builder;

(3) Show the purchase price or construction price;

(4) Show the full address of the residence; and

(5) Bear a date that is no more than 24 months preceding the expiration date of the loan agreement.

46. Part 1690 is revised to read as follows:

PART 1690—THRIFT SAVINGS PLAN

Subpart A—General

Subpart B—Miscellaneous

Authority: 5 U.S.C. 8474.

Subpart A—General

§ 1690.1 Definitions.

As used in this chapter:

Account or *individual account* means the account established for a participant in the Thrift Savings Plan under 5 U.S.C. 8439(a).

Account balance means the sum of the dollar balances for each source of contributions in each investment fund for an individual account. The dollar balance in each investment fund on a given day is the product of the total number of shares in that investment fund multiplied by the share price for the investment fund on that day.

Agency automatic (1%) contributions means any contributions made under 5 U.S.C. 8432(c)(1) and (c)(3).

Agency matching contributions means any contributions made under 5 U.S.C. 8432(c)(2).

Basic pay means basic pay as defined in 5 U.S.C. 8331(3). For CSRS and FERS employees, it is the rate of pay used in computing any amount the individual is otherwise required to contribute to the Civil Service Retirement and Disability Fund as a condition of participating in the Civil Service Retirement System or the Federal Employees' Retirement System, as the case may be. For members of the uniformed services, it is basic pay payable under 37 U.S.C. 204 and compensation received under 37 U.S.C. chapter 206.

Board means the Federal Retirement Thrift Investment Board established under 5 U.S.C. 8472.

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C).

Contribution allocation means the apportionment of a participant's future contributions, loan payments, and transfers or roll overs from eligible employer plans or traditional IRAs among the TSP investment funds.

Contribution election means a request by an employee to start contributing to the TSP, to change the amount of contributions made to the TSP each pay period, or to terminate contributions to the TSP.

Court of competent jurisdiction means the court of any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court as defined by 25 U.S.C. 1301(3).

CSRS means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, or any equivalent Federal retirement system.

CSRS employee or *CSRS participant* means any employee or participant covered by CSRS.

Date of appointment means the effective date of an employee's accession as established by the current employing agency.

Day means calendar day, unless otherwise stated.

Election period means the last calendar month of a TSP open season. It is the earliest period during which a TSP contribution election to start or change the amount of (but not terminate) contributions can become effective.

Eligible employer plan means a plan qualified under I.R.C. section 401(a) (26 U.S.C. 401(a)), including a section 401(k) plan, profit-sharing plan, defined benefit plan, stock bonus plan, and money purchase plan; an annuity plan described in I.R.C. section 403(a) (26 U.S.C. 403(a)); an annuity contract described in I.R.C. section 403(b) (26 U.S.C. 403(b)); and an eligible deferred compensation plan described in I.R.C. section 457(b) (26 U.S.C. 457(b)) which is maintained by an eligible employer described in I.R.C. section 457(e)(1)(A) (26 U.S.C. 457(e)(1)(A)).

Employee contributions means any contributions to the Thrift Savings Plan made under 5 U.S.C. 8351(a), 8432(a), or 8440a through 8440e.

Employer contributions means agency automatic (1%) contributions under 5 U.S.C. 8432(c)(1) or 8432(c)(3), and agency matching contributions under 5 U.S.C. 8432(c)(2) or 5 U.S.C. 8440e.

Employing agency means the organization that employs an individual eligible to contribute to the TSP and that has authority to make personnel compensation decisions for the individual. It includes the uniformed services.

Executive Director means the Executive Director of the Federal Retirement Thrift Investment Board under 5 U.S.C. 8474.

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B).

FERS means the Federal Employees' Retirement System established by 5 U.S.C. chapter 84 or any equivalent Federal retirement system.

FERS employee or *FERS participant* means any employee or TSP participant covered by FERS.

FERSA means the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The provisions of FERSA that govern the TSP are codified primarily in subchapters III and VII of Chapter 84 of Title 5, United States Code.

Former spouse means (as defined at 5 U.S.C. 8401(12)) the former spouse of a TSP participant if the participant performed at least 18 months of civilian service creditable under 5 U.S.C. 8411 as an employee or member, and if the participant and former spouse were married to one another for at least nine months.

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A).

G Fund rate means the interest rate computed under 5 U.S.C. 8438(f)(2).

I Fund means the International Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(E).

In-service withdrawal request means a properly completed withdrawal election for either an age-based in-service withdrawal or a financial hardship in-service withdrawal, on any form required by the TSP, together with the supporting documentation required by the application.

Investment fund means any investment fund established pursuant to 5 U.S.C. 8438.

Open season means the period during which employees may elect to make contributions to the TSP, change the amount of contributions, or terminate contributions (without losing the right to resume contributions during the next open season).

Plan participant or *participant* means any person with an account in the Thrift Savings Plan or who would have an account but for an employing agency error.

Post-employment withdrawal request means a properly completed withdrawal election on any form required by the TSP in order for a participant to elect a post-employment withdrawal of his or her account balance.

Posting means the process of crediting or debiting transactions to an individual account.

Posting date means the date on which a transaction is credited or debited to a participant's account.

S Fund means the Small Capitalization Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(D).

Separation from Government service means generally the cessation of employment with the Federal Government. For civilian employees it means termination of employment with the U.S. Postal Service or with any other employer from a position that is deemed to be Government employment for purposes of participating in the TSP, for 31 or more full calendar days. For uniformed services participants it means the discharge from active duty or the Ready Reserve or the transfer to inactive status or to a retired list as more fully described in 5 CFR 1604.2.

Share means a portion of an investment fund. Transactions are posted to accounts in shares at the share price of the date the transaction is posted. The number of shares for a transaction is calculated by dividing the dollar amount of the transaction by the share price of the appropriate date for the investment fund in question. The number of shares is computed to four decimal places.

Share price means the value of a share in an investment fund. The share price is calculated separately for each investment fund for each business day. The share price includes the cumulative net earnings or losses for each investment fund through the date the share price is calculated.

Source of contributions means employee contributions, agency automatic (1%) contributions, or agency matching contributions. All amounts in a participant's account are from one of these three sources.

Spouse means the person to whom a TSP participant is married on the date he or she signs a form on which the TSP requests spousal information, including a spouse from whom the participant is legally separated, and a person with whom a participant is living in a relationship that constitutes a common law marriage in the jurisdiction in which they live. Where a participant is seeking to reclaim an account that has been forfeited pursuant to § 1650.16, spouse also means the person to whom the participant was married on the withdrawal deadline.

Tax-deferred balance means employee or employer contributions that would otherwise be includible in gross income if paid directly to the participant and earnings on those contributions.

Tax-exempt balance means employee contributions that are made by uniformed services participants from combat zone pay. It does not include earnings on such contributions.

Thrift Savings Fund or Fund means the Fund described in 5 U.S.C. 8437.

Thrift Savings Plan, TSP, or *Plan* means the Thrift Savings Plan established under subchapters III and VII of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8351 and 8401–8479.

Thrift Savings Plan Service Office or *TSPSO* means the office of the TSP record keeper which provides service to participants. The TSPSO's address is: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161–1500.

ThriftLine means the automated voice response system by which TSP participants may, among other things, access their accounts by telephone. The ThriftLine can be reached at (504) 255–8777.

Traditional IRA means an individual retirement account described in I.R.C. section 408(a) (26 U.S.C. 408(a)) and an individual retirement annuity described in I.R.C. section 408(b) (26 U.S.C. 408(b)) (other than an endowment contract).

TSP record keeper means the entity that is engaged by the Board to perform record keeping services for the Thrift Savings Plan. The TSP record keeper is the National Finance Center, Office of Finance and Management, United States Department of Agriculture, located in New Orleans, Louisiana.

TSP Web site means the Internet location maintained by the Board, which contains information about the TSP and by which TSP participants may, among other things, access their accounts by computer. The TSP Web site address is *www.tsp.gov.*

Uniformed services means the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration.

Vested account balance means that portion of an individual's account which is not subject to forfeiture under 5 U.S.C. 8432(g).

Subpart B—Miscellaneous

§ 1690.11 Plan year.

The Thrift Savings Plan's plan year is established on a calendar-year basis for all purposes, except where another applicable provision of law requires that a fiscal year or other basis be used. As used in this section, the term ''calendar-year basis'' means a twelve-month period beginning on January 1 and ending on December 31 of the same year.

§ 1690.12 Power of attorney.

This section applies to all regulations in this chapter that require a signature by the participant on a TSP form, where the participant desires to effect transactions through an agent (*i.e.,* an attorney-in-fact). Before an attorney-in-fact may sign a TSP form on behalf of a participant, the TSP must have approved either a general power of attorney which authorizes the attorney-in-fact to act on behalf of the participant with respect to the participant's personal property or in Federal Government retirement, financial, or business transactions, or a special power of attorney which authorizes the

attorney-in-fact to effect transactions in the TSP on behalf of the participant. For the TSP to approve a power of attorney, it must be authenticated, attested, acknowledged, or certified by the principal before a notary public or other official authorized by law to administer oaths or affirmations. The TSP will advise the person submitting a power of attorney whether it is valid to effect transactions in the TSP.

§ 1690.13 Guardianship and conservatorship orders.

This section applies to all regulations in this chapter that require a signature by the participant on a TSP form, where the participant is legally unable to sign his or her name because of physical or mental incapacity. Before a guardian or conservator may sign a TSP form on behalf of such a participant, the Board must have approved a guardianship or conservatorship order issued by a court of competent jurisdiction, as defined in § 1690.1, which generally authorizes the guardian or conservator to manage the participant's estate, personal property, business or financial affairs, or retirement benefits, or which specifically authorizes the guardian or conservator to act on behalf of the participant to effect transactions in the TSP. For a guardianship or conservatorship order to be acceptable to effect TSP transactions, documentation must be submitted establishing that any bonding requirement or other preconditions specified in the court order have been satisfied. The Board will advise the guardian or conservator whether the order is valid to effect transactions in the TSP.

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Federal Register

Tuesday,
June 25, 2002

Part III

Department of Transportation

Federal Railroad Administration

49 CFR Part 238

Passenger Equipment Safety Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 238

[FRA Docket No. PCSS–1, Notice No. 8]

RIN 2130–AB48

Passenger Equipment Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of the fire safety portion of FRA's May 12, 1999 final rule establishing comprehensive Federal safety standards for railroad passenger equipment. This document amends and clarifies the final rule.

DATES: The amendments to the final rule are effective August 26, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 26, 2002. The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in Appendix B of 49 CFR part 238 as of July 12, 1999 (64 FR 25540, May 12, 1999).

FOR FURTHER INFORMATION CONTACT: Ronald Newman, Staff Director, Motive Power and Equipment Division, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, Mail Stop 25, Washington, D.C. 20590 (telephone: 202–493–6300); David Mao, Mechanical Engineer, Motive Power and Equipment Division, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, Mail Stop 25, Washington, D.C. 20590 (telephone: 202–493–6300); or Daniel Alpert, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mail Stop 10, Washington, D.C. 20590 (telephone: 202–493–6026).

SUPPLEMENTARY INFORMATION:

Background

On June 17, 1996, FRA published an Advance Notice of Proposed Rulemaking (ANPRM) concerning the establishment of comprehensive safety standards for railroad passenger equipment. *See* 61 FR 30672. The ANPRM provided background information on the need for such standards, offered preliminary ideas on approaching passenger safety issues, and presented questions on various topics including fire safety. Following consideration of comments received on the ANPRM and advice from FRA's Passenger Equipment Safety Standards Working Group (Working Group), FRA published a Notice of Proposed Rulemaking (NPRM) on September 23, 1997, to establish comprehensive safety standards for railroad passenger equipment, including fire safety standards. *See* 62 FR 49728. In addition to written comment on the NPRM, FRA also solicited oral comment at a public hearing on November 21, 1997. FRA considered the comments received on the NPRM and advice from its Working Group in preparing a final rule, which was published on May 12, 1999. *See* 64 FR 25540.

Following publication of the final rule, parties filed petitions seeking FRA's reconsideration of the rule's requirements. These petitions principally related to the following subject areas: structural design; fire safety; training; inspection, testing, and maintenance; and movement of defective equipment. On July 3, 2000, FRA issued a response to the petitions for reconsideration concerning the final rule's requirements for the inspection, testing, and maintenance of passenger equipment, the movement of defective passenger equipment, and other related, miscellaneous provisions. *See* 65 FR 41284. On April 23, 2002, FRA responded to all remaining issues raised in the petitions for reconsideration other than those concerning the fire safety portion of the final rule. *See* 67 FR 19970.

FRA is hereby responding to the issues raised in the petitions for reconsideration concerning fire safety. FRA has responded by letter to certain issues raised in these petitions, and has otherwise provided guidance to the regulated community in explaining the rule's requirements. This **Federal Register** notice incorporates FRA's announcements and guidance on the rule. The amendments contained in this document generally clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, and are within the scope of the issues and options discussed, considered, or raised in the NPRM.

The specific issues and recommendations raised by the petitioners, and FRA's response to their petitions, are discussed in detail in the ''Section-by-Section Analysis'' portion of the preamble, below. The section-by-section analysis also contains a detailed discussion of each provision of the final rule which FRA has amended or clarified. This will enable the regulated community to more readily compare this document with the preamble discussions contained in the final rule and will aid in understanding the requirements of the rule.

Section-by-Section Analysis

Amendments to 49 CFR Part 238

Subpart A—General

Section 238.7 Waivers

This section sets forth the procedures for seeking waivers of compliance with the requirements of this part. FRA recognizes that circumstances may arise where the operation of passenger equipment that does not meet the standards contained in this part is nevertheless consistent with railroad safety and in the public interest. With respect to FRA's fire safety standards, FRA understands that railroads may desire to use materials in their passenger equipment that do not comply with the test performance criteria for flammability and smoke emission characteristics specified in this part. For instance, a railroad may need to use material possessing certain functional characteristics, such as flexibility, even though the material is otherwise unavailable in a form complying with this part's flammability and smoke emission requirements.

Should it be necessary to file a waiver petition for use of material not complying with this part's flammability or smoke emission requirements, or both, 49 CFR 211.9(c) requires in particular that sufficient information, including relevant safety information, be provided to support the request. FRA would expect that each such petition include a fire safety analysis demonstrating that use of the material is consistent with railroad safety by not creating an unacceptable risk of injury to passengers and crewmembers. In making such a showing, the analysis should consider the material's size, location, exposure to potential ignition sources, contribution to flame spread and smoke emission, and variation from the test performance criteria specified in this part; the railroad's operating environment; the presence or absence of heat/smoke detection and fire suppression systems; and the availability of rapid and safe egress to the exterior of the vehicle under conditions secure from fire, smoke, and other hazards. As railroads are already required by § 238.103 to conduct fire safety analyses of both their existing and new passenger cars and locomotives, such an analysis should generally not impose a new burden on railroads in filing waiver requests. FRA would expect that a railroad submit its fire safety analyses of its existing and new passenger cars and locomotives, as

appropriate, with a waiver petition to justify the use of material not complying with the flammability or smoke emission requirements of this part, or both. The fire safety analyses required by § 238.103 evaluate the safety of the rail equipment as a whole, and thereby help place in context the use of the material that is the subject of the waiver request.

Subpart B—Safety Planning and General Requirements

Section 238.103 Fire Safety

This section specifies the fire safety analysis requirements for passenger cars and locomotives, as well as the requirements for the materials used in this equipment.

Paragraph (a). Paragraph (a)(1) concerns the fire safety requirements for the materials used in constructing passenger cars and cabs of locomotives ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. These materials are required to meet the test performance criteria for flammability and smoke emission characteristics specified in Appendix B, or alternative standards issued or recognized by an expert consensus organization after special approval of FRA under § 238.21. Even though this paragraph remains unchanged from the final rule, FRA makes clear that ''materials used in constructing a passenger car or a cab of a locomotive'' include materials used in objects that are either permanently or semi-permanently attached to the car or locomotive cab structure. Such objects are in effect part of the equipment-in distinction to luggage and other transient objects that passengers and crewmembers bring onto and remove from the equipment. Should it be necessary to file a waiver petition for use of material not complying with this part's flammability or smoke emission requirements, or both, please see the discussion of § 238.7, above.

Paragraph (a)(2) concerns the fire safety requirements for materials introduced in a passenger car or a locomotive cab on or after November 8, 1999, as part of any kind of rebuild, refurbishment, or overhaul of the car or cab. These materials are required to meet the test performance criteria for flammability and smoke emission characteristics specified in Appendix B, or alternative standards issued or recognized by an expert consensus organization after special approval of FRA under § 238.21.

The American Public Transportation Association (APTA) petitioned FRA for reconsideration of this section, raising concern about its member railroads' ability to meet the requirements of paragraph (a)(2) when the testing standards in Appendix B must be used to identify compliant materials. As noted in the discussion of Appendix B below, APTA and the National Railroad Passenger Corporation (Amtrak) both raised concerns with the test procedures and performance criteria in Appendix B and recommended that the prior version of the Appendix B table in the NPRM be substituted for the one contained in the final rule until an appropriate industry review is conducted. APTA believed that it would be more appropriate to permit commuter railroads to continue using their existing inventories of replacement materials until those inventories were depleted, unless the materials pose an unacceptable risk to safety, and to prohibit new purchases of non-compliant materials effective November 8, 1999, as evaluated by the NPRM table. APTA stated that the public procurement regulations that its member railroads operate under generally require them to place orders for a year's supply of materials and that this recommended change would permit them to conduct the appropriate tests of materials to facilitate an orderly transition to the rule's requirements.

By letter dated November 5, 1999, FRA responded in part to these concerns. (A copy of this letter has been placed in the public docket for this rulemaking.) For purposes of the requirements of § 238.103(a)(2), FRA explained that, for a transitional period, it would amend the rule to exclude those materials introduced in a passenger car or a locomotive cab from the test procedures and performance criteria in Appendix B that were not expressly subject to FRA's fire safety guidelines for materials selection. These guidelines (1989 FRA guidelines) were last published in the **Federal Register** on January 17, 1989, *see* 54 FR 1837, and were restated (with four typographical errors in the performance criteria column) as Appendix B to part 238 in the NPRM. (To be consistent with the 1989 FRA guidelines, the performance criteria in the NPRM for ''Panels: HVAC Ducting'' should have read ''Ds (4.0) ≤100''; ''Flooring: Covering'' should have read ''CRF ≥0.5 w/cm^2''; ''Insulation: Thermal'' should have read ''Ds (4.0) ≤100''; and ''Insulation: Acoustic'' should have read ''Ds (4.0) ≤100,'' as well.) FRA learned that passenger railroads, acting in good faith, may have been unable to comply with § 238.103(a)(2) as written because of difficulty obtaining certain materials—or certification for these materials, or both—subject to the requirements of Appendix B that were not expressly covered by the 1989 FRA guidelines. FRA acquired particular information in this regard at an October 6, 1999 meeting of APTA's PRESS (Passenger Rail Equipment Safety Standards) Passenger Systems Group, Fire Safety Subgroup. (The minutes of this meeting, as prepared by a designee of the group, have been placed in the public docket for this rulemaking.)

Based on this understanding, FRA believed that it would be appropriate to specify a longer transitional period than that provided in the rule (originally 180 days from the date of publication) to allow railroads to obtain materials from their suppliers—and certification for the materials—complying with the fire safety requirements. Consequently, FRA stated that it would amend the rule to include, on a transitional basis, a new appendix to the rule, designated as Appendix B1, comprising Appendix B to part 238 in the NPRM as corrected. This would have effectively codified the 1989 FRA guidelines. FRA explained that the rule would provide that on or after November 8, 1999, and for this transitional period only, materials that were introduced in a passenger car or a locomotive cab as part of any kind of rebuild, refurbishment, or overhaul of the car or cab meet the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B or B1 to part 238; or alternative standards issued or recognized by an expert consensus organization after special approval by FRA under § 238.21. FRA made clear that a railroad would be required to follow the test performance criteria for materials in either one of the appendices or the other, as a whole, during this period—and not choose between the appendices for different materials—in order to retain the appendices' integrity. By permitting the use of Appendix B1 during this period, FRA expected to minimize the impact on railroads acting in good faith to comply with the final rule. FRA explained that responsible railroads that had followed the 1989 FRA guidelines all along in purchasing materials for their passenger fleets should seemingly not have had difficulty complying with § 238.103(a)(2) as FRA announced it would be amended.

Since issuing the November 5, 1999 letter, FRA has reexamined this issue in general and has decided not to issue an Appendix B1. As explained below, FRA is amending Appendix B to address the principal concern of passenger railroads that, through the final rule, FRA had imposed requirements on materials that

were not expressly covered by the 1989 FRA guidelines. FRA believes that these amendments eliminate the need to add an Appendix B1. Furthermore, the presence of two appendices could add confusion at a time when FRA is attempting to make the fire safety requirements easier to understand and follow. Therefore, paragraph (a)(2) remains unchanged from the final rule. Should these technical assumptions prove incorrect for reasons FRA does not presently apprehend, FRA will take further action, as appropriate, to provide the requested relief.

FRA is adding paragraph (a)(3) to ensure that railroads may rely on the results of tests of materials conducted in accordance with the standards and performance criteria for flammabilitiy and smoke emission characteristics as specified in Appendix B to part 238 of the May 12, 1999 final rule, which took effect on July 12, 1999. FRA recognizes that materials have already been installed in passenger cars and locomotives in reliance on the requirements of the final rule, and other materials are now held in inventory or have otherwise been ordered in reliance on the requirements of the final rule. Accordingly, for purposes of complying with the requirements of paragraphs (a)(1) and (2), a railroad may rely on the results of tests of material conducted in accordance with the standards and performance criteria for flammabilitiy and smoke emission characteristics as specified in Appendix B to this part in effect on July 12, 1999, if prior to June 25, 2002 the material is installed in a passenger car or locomotive, held in inventory by the railroad, or ordered by the railroad.

FRA is amending the test standards and performance criteria in Appendix B in two principal ways that necessitate adding this paragraph. First, as discussed below, FRA is updating Appendix B to incorporate newer versions of the test standards referenced therein that have been published since the final rule was promulgated. FRA is therefore making provision for railroads to rely on the results of tests using the earlier versions of the test standards as referenced in Appendix B of the May 12, 1999 final rule. Further, as discussed below, FRA is amending Appendix B to restore the function of material subcategories for thermal and acoustic insulation, as well as for HVAC ducting, that were proposed in the NPRM and contained in the 1989 FRA guidelines. Because restoration of these subcategories results in stricter performance criteria for these materials than specified in the May 12, 1999 final rule, FRA is also making provision for railroads to rely on the results of tests of these materials conducted in accordance with the standards and performance criteria as specified in Appendix B of the May 12, 1999 final rule. As noted above, use of these test results is limited to material that is installed in a passenger car or locomotive, held in inventory by the railroad, or ordered by the railroad prior to June 25, 2002.

Paragraph (b). This paragraph requires railroads to obtain certification that a representative sample of combustible materials to be used in constructing passenger cars and locomotive cabs or introduced into such equipment as part of any kind of rebuild, refurbishment, or overhaul of the equipment has been tested and complies with the fire safety requirements of paragraph (a) at the time it was tested. Although the paragraph remains unchanged from the final rule, concern has been raised whether a material must be retested to show compliance with the required test performance criteria when such material has previously passed an earlier version of a specified test procedure. As a result, FRA makes clear that re-certification of the material is not necessary if the test procedure(s) and performance criteria used to evaluate the material are not less stringent than the ones applicable to the material through the requirements of paragraph (a). Of course, FRA is concerned that the test results reflect the performance of the actual material used in the passenger car or locomotive cab—rather than reflect outdated material composition. Consequently, in Phase II of the rulemaking FRA will consider whether use of tests results should be limited to tests of materials conducted within a certain number of years.

Paragraph (c). This paragraph specifies the fire safety analysis requirements for procuring new passenger cars and locomotives. FRA is amending the heading of this paragraph to reflect the focus on passenger car and locomotive fire safety, consistent with the requirements in paragraph (a), instead of on all passenger equipment generally. FRA has likewise amended paragraph (d), below. FRA is removing the express requirement for railroads to reduce the risk of ''equipment damage'' caused by fire to an acceptable level in conducting their analyses, as stated in the final rule. *See* 64 FR 25670. FRA's chief concern is that railroads reduce the risk of personal injury caused by fire to an acceptable level, as required by the final rule, even if the equipment is damaged in the process. At the same time, FRA is amending paragraph (c) to make clear that, in ensuring that fire safety considerations and features in the design of new passenger cars and locomotives reduce the risk of personal injury caused by fire to an acceptable level as determined by the railroad, each railroad must consider the operating environment in which this equipment will operate. Railroads must consider the presence of other passenger equipment (*e.g.,* a baggage or private car) that operates in the same trains with the passenger cars and locomotives for purposes of evaluating passenger car and locomotive occupant safety. Yet, the focus of the required analysis is not on the safety of the other passenger equipment itself. Further, in considering the operating environment of the passenger cars and locomotives, railroads must pay particular attention to whether the equipment will operate in tunnels or on elevated structures where passenger egress from—and emergency response access to—the equipment is restricted.

FRA notes that the final rule cited MIL–STD–882C, ''System Safety Program Requirements,'' as a formal safety methodology to guide railroads in reducing the risks of personal injuries caused by fire to an acceptable level. MIL–STD–882 was updated on February 10, 2000, and designated as MIL–STD–882D, ''Standard Practice for System Safety,'' superceding MIL–STD–882C. Consequently, FRA is amending the rule to remove the ''C'' designation to make clear that a railroad may use MIL–STD–882D or another formal safety methodology as a guide in reducing such risks. Further, as a general matter, FRA makes clear that a railroad is not required to reduce the risk of personal injuries to zero in order to comply with paragraph (c), as such a requirement would be impractical.

FRA is also making some changes to paragraph (c) largely for organizational consistency and clarity. First, FRA is re-designating paragraph (c)(2) of the final rule as paragraph (c)(1). Next, FRA has partially merged paragraphs (c)(1) and (c)(8) of the final rule into one paragraph, as both are related, and is designating that paragraph as (c)(2). FRA recognizes that, as stated in the final rule, a railroad acting in good faith may have been unable to comply with the requirements of paragraph (c)(1) and that the text of paragraph (c)(8) more appropriately stated FRA's intent. Moreover, FRA is making clear in revised paragraph (c)(2) that in protecting the equipment's occupants from fire, preventing a fire in the first place is logically the first priority of a railroad. Further, FRA is making clear in revised paragraph (c)(2) that in conducting their analyses of new equipment railroads consider, among

other factors, potential ignition sources; the type, quantity, and location of the materials used in the equipment; and availability of rapid and safe egress to the exterior of the equipment under conditions secure from fire, smoke, and other hazards. These considerations, among others, are expressly stated in paragraph (d) for purposes of analyzing existing passenger equipment, and logically apply in conducting analyses of new equipment as well. FRA is correcting paragraph (c)(7) by deleting the phrase ''the railroad shall'' so that it is more consistent with the structure of the other items in paragraph (c). Further, FRA is re-designating paragraph (c)(9) of the final rule as paragraph (c)(8), removing the express requirement to address ''cost and performance issues'' and instead focusing the paragraph exclusively on safety issues, and adding the words ''selection of materials'' to make clear that selecting materials is part of the design process. FRA is also revising paragraph (c)(8) of the final rule due to the partial merger of final rule paragraphs (c)(1) and (c)(8), and re-designating the paragraph as (c)(9). Paragraph (c) requires that the fire safety analysis be in writing, and paragraph (c)(9) further serves to make this clear.

Paragraph (d). This paragraph specifies the fire safety analysis requirements for existing railroad passenger cars and locomotives. As noted above, FRA is amending this paragraph to reflect the focus on passenger car and locomotive fire safety, consistent with the requirements in paragraph (a), instead of on all passenger equipment generally. Accordingly, in the heading to paragraph (d) and throughout paragraphs (d)(1)–(5), FRA has substituted the phrase ''passenger cars and locomotives'' for ''passenger equipment'' and ''equipment,'' as appropriate. Railroads must consider the presence of other passenger equipment (*e.g.,* a baggage or private car) that operates in the same trains with the passenger cars and locomotives for purposes of evaluating passenger car and locomotive occupant safety. Yet, the focus of the required analyses is not on the safety of the other passenger equipment itself.

As provided in the final rule, each passenger railroad was required to complete a preliminary fire safety analysis for each category of its existing rail equipment and rail service no later than July 10, 2000. For any category of equipment and service identified during the preliminary fire safety analysis as likely presenting an unacceptable risk of personal injury, the final rule required a full analysis and any necessary remedial action to abate such unacceptable risks no later than July 10, 2001. The final rule further required a full fire safety analysis for all categories of equipment and service, and any necessary remedial action to abate unacceptable risks of personal injury, no later than July 10, 2003.

APTA petitioned FRA for reconsideration of this paragraph, stating that FRA had provided little guidance as to what constitutes good practice for performing fire safety analyses and how to classify a risk as acceptable or not. APTA's petition explained that these are necessarily somewhat subjective judgments and that railroads would need additional guidance in making these determinations—particularly those railroads without in-house engineering staffs. APTA recommended that FRA grant the industry an additional six months to develop a recommended practice for performing fire safety analyses in order to provide for more consistency across the industry, and volunteered its PRESS Task Force to work expeditiously to complete a suitable standard practice. APTA committed that, during this additional six months, commuter railroads would begin reviewing maintenance records to identify car components that have a history of incidents that could indicate a fire hazard and conduct a top-level review of railcar interiors to identify items of potential risk.

By letter dated October 8, 1999, FRA announced that it would amend the rule to provide railroads an additional six months (until January 10, 2001) to complete the preliminary fire safety analysis for each category of existing rail equipment and service as required by § 238.103(d)(1). (A copy of this letter to APTA has been placed in the public docket for this rulemaking.) This **Federal Register** notice amends the rule accordingly. For any category of existing passenger cars and locomotives and rail service identified in the preliminary fire safety analysis as likely presenting an unacceptable risk of personal injury, § 238.103(d)(2) continues to require railroads to have completed a full analysis and taken any necessary remedial action to abate unacceptable risks no later than July 10, 2001. Further, § 238.103(d)(3) continues to require railroads to complete a full fire safety analysis for all categories of existing passenger cars and locomotives and rail service, and take any necessary remedial action to abate unacceptable risks no later than July 10, 2003. Railroads may complete any necessary remedial action required by paragraph (d) ahead of the deadlines for taking such action; FRA has encouraged railroads to do so as resources permit.

FRA and Volpe National Transportation Systems Center (Volpe Center) staff have served as advisors to the APTA PRESS Fire Safety Subgroup of the Passenger Systems Group that focused on developing a model fire safety analysis to guide railroads in complying with paragraph (d) and more uniformly implement its requirements across the nation's passenger railroads. From FRA's initial involvement with the Subgroup following publication of the final rule, FRA learned that most commuter railroads intended to conduct full fire safety analyses for all categories of their rail equipment and service by the date required in paragraph (d)(1), instead of availing themselves of the additional time provided by paragraphs (d)(2) and (3) to complete the analyses in stages. FRA had recognized the efficiency of the commuter railroads' intended approach but structured the rule to require railroads to focus more immediately on apparent personal injury risks uncovered by preliminary fire safety analyses and then address such risks before requiring them to complete more detailed fire safety analyses on all their equipment and rail service. Nevertheless, FRA makes clear that a railroad, to be in compliance with the rule as amended, need have performed only one fire safety analysis if it was completed by January 10, 2001, and fully covered all categories of the railroad's passenger cars and locomotives and rail service.

On November 1, 2000, the APTA Press Task Force approved ''Recommended Practice for Fire Safety Analysis of Existing Passenger Rail Equipment,'' APTA–RP–PS–005–00. (A copy of this document as approved by APTA's Commuter Rail Executive Committee on January 8, 2001, has been placed in the public docket for this rulemaking.) In addition to guiding railroads in complying with paragraph (d), this recommended practice is also intended to be incorporated into the passenger railroads' system safety programs as a permanent safety tool. Among other things, the recommended practice helps to differentiate between levels of personal injury risks for purposes of taking remedial action to reduce those risks, as appropriate.

Nevertheless, as to APTA's concern that FRA had provided little guidance in the rule as to what constitutes good practice for performing fire safety analyses and how to classify a personal injury risk as acceptable or not, FRA referred APTA in the October 8, 1999 letter to the definition of a category of

rail equipment and current rail service for purposes of paragraph (d). As stated in paragraph (d)(5), as amended, a ''category of existing passenger cars and locomotives and rail service'' is itself dependent on an analysis that includes consideration of relevant fire safety risks, such as available ignition sources, presence or absence of heat/smoke detection and fire suppression systems, known variations from the required material test performance criteria or alternative standards approved by FRA, and availability of rapid and safe egress to the exterior of a vehicle under conditions secure from fire, smoke, and other hazards. As a result, any analysis required under paragraph (d) must include these considerations, albeit to differing and progressively greater degrees of scrutiny to comply with the requirements of paragraphs (d)(1) through (3). Additionally, paragraph (d) provides that a railroad is not required to replace material found not to comply with the test performance criteria for flammability and smoke emission characteristics required by part 238 if the risk of personal injuries from the material is negligible based on the railroad's operating environment and the material's size, or location, or both. (See paragraphs (d)(2)(ii)(A) and (d)(3)(ii)(A).) FRA also makes clear that a railroad is not required to reduce the risk of personal injuries to zero in order to comply with paragraph (d), as such a requirement would be impractical. Moreover, as FRA explained in its October 8, 1999 letter, railroads should consider, as appropriate, the elements contained in paragraph (c) for purposes of analyzing the fire safety of their existing rail equipment under paragraph (d). Paragraph (c) specifies fire safety analysis considerations that reflect good, commonly used engineering practices.

Appendix B—Test Methods and Performance Criteria for the Flammability and Smoke Emission Characteristics of Materials Used in Passenger Cars and Locomotive Cabs

The test standards and performance criteria in this Appendix are based on guidelines originally developed by the Volpe Center for the Urban Mass Transportation Administration (now the Federal Transit Administration) in the 1970s, and last published by FRA in 1989. In the NPRM, FRA generally proposed making the 1989 FRA guidelines mandatory for materials used in the construction of new railroad passenger equipment as well as in the refurbishment of existing equipment. *See* 62 FR 49803. In the final rule, FRA revised the table of test methods and performance criteria for the flammability and smoke emission characteristics of materials used in railroad passenger cars and locomotive cabs, and clarified the application of the required tests and performance criteria as well. *See* 64 FR 25555. In issuing the final rule, FRA sought to maintain the high level of safety provided by FRA's 1989 guidelines while addressing concerns related to their adoption as a regulation. *See* 64 FR 25647.

As noted above in the discussion of § 238.103(a)(2), APTA's petition for reconsideration raised concern with the table of test methods and performance criteria contained in Appendix B, stating that the final rule contains several changes but fails to explain why these changes were made and that the changes were not approved by the National Fire Protection Association (NFPA). APTA raised particular concern that the final rule would degrade safety standards for smoke densities and flame spread in several areas, and did not wish to adopt changes that would reduce passenger and employee safety. APTA believed that without more data concerning the impact of the final rule's standards on safety and rail car design, and until the industry completes its review, the standards presented in the NPRM should be adopted instead. APTA added that consideration of new fire safety test methods and performance criteria should be identified as the first item in Phase II of the rulemaking. Amtrak likewise stated that the NPRM table was technically appropriate but that changes made in the final rule appeared to have caused substantial, unintended results. Amtrak recommended that FRA revert to using the NPRM table pending an appropriate industry review of the table contained in the final rule. Bombardier Transportation (Bombardier) similarly recommended in its petition for reconsideration that FRA return to the specific standards proposed in the NPRM and make any refinements in Phase II of the rulemaking. Bombardier raised particular concern that the final rule covered all materials used in constructing or refurbishing passenger cars and locomotive cabs, and was not limited to materials used in constructing or refurbishing the interiors of such equipment.

In response to these petitions as a whole, FRA has decided not to revert in full to the 1989 guidelines as they appeared in Appendix B of the NPRM. To do so would cause the removal of Note 3 of the final rule, for instance, which provides for the testing of seat and mattress assemblies as integrated units to alternative test performance criteria. As discussed below, seat assemblies tested in such manner have been placed in Amtrak's Acela trainsets. Nevertheless, FRA has revised Appendix B and believes that these revisions effectively address the principal concerns raised by these petitioners, while at the same time retaining elements of the final rule related to the adoption of the guidelines as an FRA regulation. The revisions to Appendix B are discussed in detail below.

FRA notes that the requirements of Appendix B should be considered in light of the fire safety requirements specified in § 238.103 as a whole, which together comprise different aspects of a systems approach to fire safety. This systems approach incorporates basic, generally accepted fire protection engineering practices and principles, and is consistent with the advisory text included by the American Society for Testing and Materials (ASTM) in introducing its test procedures that are referenced in Appendix B. The ASTM cautions that test results ''should be used to measure and describe the response of materials, products, or assemblies to heat and flame under controlled conditions, and should not be used to describe or appraise the fire-hazard or fire-risk of materials, products, or assemblies under actual fire conditions.'' The ASTM also advises that the test results ''may be used as elements of a fire-hazard assessment or a fire-risk assessment which takes into account all of the factors which are pertinent to an assessment of the fire hazard or fire risk of a particular end use.''

FRA believes that the test performance criteria specified in Appendix B provide important information as to the resistance of materials to ignition, and their rates of flame spread and smoke emission, albeit under controlled conditions. This information should not be examined in a ''vacuum'' but rather as part of a fire safety analysis of a passenger rail vehicle in its end use, such as that required for new passenger cars and locomotives by § 238.103(c). Nevertheless, the use of materials complying with the requirements of Appendix B serves to limit the overall risk of fire in a vehicle and promote the time available for passenger and crew evacuation if a fire does occur. FRA intends to evaluate in Phase II of the rulemaking whether alternative test methods and performance criteria should be specified for all materials in Appendix B. The National Institute of Standards and Technology (NIST), on behalf of FRA, is investigating the use

of alternative testing methodologies and computer hazard analysis models to identify and evaluate approaches to passenger train fire safety. *See* 64 FR 25554. As FRA has explained, NIST has previously found that individual components of a passenger rail car may perform differently in an actual fire from that experienced in small-scale tests (particularly when large ignition sources are involved) due to vehicle geometry and materials interaction. *Id.*

FRA's use of standards established by other organizations, such as ASTM, is a means of establishing technical requirements without increasing the volume of the Code of Federal Regulations. *See* 1 CFR part 51. Following publication of the final rule, ASTM advised FRA that it had updated certain of its test standards that are referenced in the rule. For example, ASTM standard E 662–97 (the 1997 version of standard E 662) was incorporated into the May 12, 1999 final rule; the newer version of this ASTM standard is E 662–01 (the 2001 version of standard E 662). The newer version of the standard bears the same general technical content as the standard currently incorporated but has been reviewed by an ASTM committee and revised. In other cases, ASTM has reviewed standards and affirmed them as unchanged. During the review of the standards, changes occur-or not-by consensus of ASTM committee members. This process provides the opportunity for members of industry, government, and academia to participate, and FRA considers the updated standards to have been adequately reviewed and be technically sound.

FRA is incorporating by reference such updated ASTM test standards into the rule. In addition to ASTM E 662, these updated standards consist of ASTM C 1166, ASTM D 3675, ASTM E 119, ASTM E 648, ASTM E 1354, and ASTM E 1537. FRA understands that industry practice is to use the updated versions of the ASTM standards. Since Federal law requires that a publication incorporated by reference be identified by its title, date, edition, author, publisher, and identification number, *see* 1 CFR 51.9(b)(2), FRA is amending the rule to incorporate the updated standards so as to expressly permit their use. Further, FRA intends to regularly update the rule to incorporate newer versions of the test standards referenced herein, as they are periodically revised. Nevertheless, as discussed in detail above, FRA is adding paragraph (a)(3) to provide a means for railroads, under certain conditions, to rely on the results of tests conducted using the earlier versions of the ASTM standards as cited in the May 12, 1999 final rule for the purpose of showing compliance with the requirements of Appendix B.

FRA notes that LTK Engineering Services (LTK) also petitioned for reconsideration of the fire safety standards, raising a number of specific issues which are identified below. LTK explained that very few materials were capable of meeting the 1989 FRA (and earlier FTA and FRA) guidelines when they were first published, but since that time products intended for use in railcars have been reformulated to meet and often exceed the performance criteria. LTK raised concern that the final rule did not seem to reflect the improvements made to materials over the past 20 years and placed no burden on the industry to improve further the performance of the materials. LTK stated that, over the years, it has witnessed many attempts by product manufacturers to provide rail car buyers with materials of lesser quality and performance, and believed that the new regulations would perpetuate this practice.

Bay State Marketing Consultants (Bay State) raised similar concerns in a petition for reconsideration, noting that products such as seat foam, elastomers, thermal and acoustic insulation, vacuum foaming and wall lining materials have been reformulated to exceed the 1989 FRA guidelines. Bay State believed that the final rule ignores the improved materials and products on the market today, and reflects an essential unfamiliarity with both the relevance of the test methods and the operating environment encountered by the majority of passenger rail cars, such as those operating in the New York City tunnel system. Specifically, the petitioner believed that the rule should be continually revised until all products used in rail car construction comply with a smoke (or specific optical) density limit (Ds) of 100 at 4 minutes using the ASTM E 662 test procedure. The petitioner stated that an acceptance level of 200 provides little protection, and maintained that the smoke emitted from one fully combusted window mask complying with a Ds of 200 will completely obscure human vision beyond a distance of two feet, disabling people and preventing them from locating emergency exits. The petitioner believed that the standard would not be tolerated by anyone who actually stood in a room with such a smoke density.

As FRA has explained, the final rule is the first of a two-phased rulemaking. *See* 64 FR 25554. In the second phase, FRA will examine the need for further refinements to the test procedures and performance criteria following, in particular, a review of the results of ongoing fire safety research conduct by NIST. FRA has acknowledged that since the FRA guidelines were originally developed in the 1970s, a greater number of materials has become available that exceed the stated test performance criteria. Had FRA made the test performance criteria in the final rule more stringent on the basis of the concerns raised by these two petitioners, the final rule would indeed have been a marked departure from the NPRM. However, this was not the case.

LTK also raised concern that the rule specifies no requirements for the toxicity of gasses emitted from burning materials, noting that many commuter rail car specifications contain such requirements. FRA recognizes this concern, and has identified this as an issue to examine in Phase II of the rulemaking. FRA has not previously recommended any specific performance standards for material toxicity. However, preliminary research conducted by NIST has shown that, for currently used materials within a rail car, the heat generated by burning the materials may prove fatal to occupants before the occupants are overcome by toxic gases within the vehicle.

Cushions and Mattresses

As noted in the preamble to the final rule, ''Cushions, Mattresses'' is a new category in the table which was listed in the 1989 FRA guidelines and the NPRM under the function of material column and included under the category, ''Passenger seats, Sleeping and dining car components.'' 64 FR 25648. In its petition for reconsideration, LTK maintained that cushions and mattresses today can meet a Ds of 150 at 4 minutes—lower than the Ds of 175 in the final rule. Bay State stated in its petition that since seat foams constitute one of the major sources of fuel in a car interior, FRA should strongly consider limiting seat foam smoke emission standards generally to 150 at 4 minutes and even to 100 at 4 minutes for those vehicles operating in tunnels or on elevated structures. The petitioner noted that smoke inhalation is the major source of passenger disablement and death in a fire, and that smoke is the primary obstacle to locating emergency exits.

Because FRA did not intend to make the smoke emission performance criteria for cushions and mattresses more stringent in Phase I of this rulemaking, the final rule imposed the same smoke emission performance criteria as those recommended in the 1989 guidelines. Nonetheless, the concerns raised by

these petitioners to adopt stricter smoke emission performance criteria for cushions and mattresses merit consideration in Phase II of the rulemaking.

Note 1 remains unchanged from the final rule. Note 2 remains unchanged except for the reference to ASTM E 662–01. As discussed above, certain of the ASTM test standards referenced in the rule, such as ASTM E 662, have been updated.

As explained in the final rule, FRA has been investigating the testing of assemblies of materials for performance in a fire, rather than individually testing the materials which comprise such assemblies, to reflect more realistically the interaction of materials in a fire. *See* 64 FR 25648. As part of the FRA-sponsored fire safety research program managed by the Volpe Center, six full-scale alternative seat assemblies being considered for Amtrak's high-speed trainsets were tested in March, 1997, using a furniture calorimeter. Among other things, the test results showed that fire blocking layers can significantly prevent fire ignition and limit flame spread, fire growth, and smoke generation. Note 3 of the final rule permitted the testing of seat and mattress assemblies as an integrated unit, in the alternative to individually testing the components that comprise the seat or mattress assembly, using ASTM E 1537 (''Standard Test Method for Fire Testing of Upholstered Seating Furniture'') and the pass/fail criteria specified in California Technical Bulletin (Cal TB) 133 (''Flammability Test Procedure for Seating Furniture for Use in Public Occupancies''). FRA noted that Cal TB 133 has a successful history of use at state and municipal levels for high-hazard occupied places such as nursing homes and that results of the March, 1997 tests showed that certain seat assemblies met the Cal TB 133 test performance criteria, did not spread any flame, and exhibited low rates of heat and smoke release. *Id.* Moreover, data from Amtrak-funded tests showed that seat assemblies selected for use on Amtrak's high-speed trainsets passed both the ASTM D 3675 and Federal Aviation Administration (FAA) ''oil burner'' tests for cushions and fabrics, in addition to passing the ASTM E 1537 and E162 tests specified in the final rule.

In its petition for reconsideration, LTK expressed concern that Note 3 would allow the use of urethane materials in seat cushions and that such materials would otherwise not meet the test performance criteria for flammability and smoke emission. The petitioner believed this represented a potential fire hazard since it perceived that the rule did not require the assembly tested to continue to be subject to integrity requirements for the life of the assembly, even in the case the assembly covering (fire blocking layer(s)) were cut due to accident or vandalism. In addition, the petitioner believed that no dynamic cycling tests were imposed on seat assemblies by the final rule, adding that such tests were necessary to simulate real-world wear.

FRA stated in Note 3 that use of the alternative test performance criteria for seat and mattress assemblies is dependent on the condition of the assemblies' components remaining unchanged or, if they were replaced, possessing at least equivalent fire performance properties to the original components tested to provide for necessary quality control of the components. Further, Note 3 requires an accompanying fire hazard analysis that considers the operating environment within which seat and mattress assemblies will be used in relation to the risks of vandalism, puncture, cutting, or other such acts or external forces which may expose the individual components of the assemblies to a source of ignition. Although seats and mattresses may contain foams that would not otherwise meet the test performance criteria if tested individually, such foams are required to be protected by a robust blocking layer or layers (as used to meet FAA fire seat regulations) resistant to both fire and vandalism, puncture, cutting, and other such acts and external forces. FRA noted in the final rule that the U.S. Coast Guard has issued a Navigation and Vessel Inspection Circular (NAVIC) for structural fire protection which permits the use of fire blocking layers if tested according to Cal TB 133; the NAVIC states that these fire blocking materials have proven effective in protecting combustible foams from becoming involved in a fire. *See* 64 FR 25648, note 13. Such blocking layers must be applied in a manner which seals the seams (*e.g.,* using bonding or ceramic thread with binding tape) and ensures that the foam is not exposed to an ignition source. In evaluating the risk that the integrity of an assembly may be compromised so that its foam is exposed to an ignition source, a railroad must consider the frequency of its inspections of such assemblies to verify their condition. A fire blocking layer that is cut, torn, or punctured so that the integrity of the assembly is compromised must be repaired or replaced to ensure continued compliance with Note 3. FRA makes clear that the assembly tested continues to be subject to the requirements of Note 3 for the life of the assembly. Further, FRA has amended the rule to make clear that Notes 5, 6, 7, and 8 apply to the surface layers of seat and mattress assemblies tested in accordance with Note 3, to simulate real-world wear.

Separately, GBH International (GBH) petitioned FRA for reconsideration of Note 3, stating that mattresses cannot be tested according to the ASTM E 1537 test procedure because it is specific to chairs and sofas and the testing apparatus is too small to accommodate the mattress sample. According to the petitioner, the ASTM E 1590 test procedure is the corresponding test for mattresses. However, GBH added that it is not clear whether mattress combinations for passenger rail applications would be suitably tested by the ASTM E 1590 test procedure, maintaining that the exposure is intended for a lower risk fire environment and that a small increase in ignition source intensity can easily have a significant effect on the fire hazard. GBH therefore recommended that passenger rail mattresses be tested to the same pass-fail criteria as Cal TB 133 but with an ignition source similar to the FAA oil burner test used for aircraft seat cushion flammability in the same room environment as the ASTM E 1590 test procedure. The petitioner likewise noted that testing of seat applications in passenger rail cars will likely suffer from similar problems as the testing of mattresses and recommended using an ignition source for seat testing similar to the FAA oil burner test in the same room environment as the ASTM E 1537 test procedure using Cal TB 133 performance criteria.

FRA agrees that ASTM E 1590 is the more appropriate test procedure for a mattress assembly, and is effectively the corresponding test to ASTM E 1537 for a larger object. As a result, FRA has amended the rule to require use of the ASTM E 1590 test procedure for purposes of testing mattress assemblies in accordance with the alternative standards specified in Note 3. However, FRA has also amended the rule to require that mattress assemblies tested using the ASTM E 1590 test procedure be evaluated against the performance criteria contained in Cal TB 129—not Cal TB 133. Cal TB 129 describes performance criteria for mattress assemblies and contains, in effect, the corresponding performance criteria to those for seat assemblies in Cal TB 133. FRA recognizes that the FAA oil burner test for aircraft seat cushions, which is found at 14 CFR part 25, Appendix F,

Part II, addresses the risk of fuel-fed fires. However, FRA has noted that certain seat assemblies tested for placement in Amtrak's high-speed trainsets using the ASTM E 1537 test procedure also passed the FAA's oil burner test. In Phase II of the rulemaking, FRA will further examine the petitioner's recommendation to use the oil burner as an ignition source during the ASTM E 1537 and 1590 tests.

Note 4 remains unchanged from the final rule. FRA makes clear that Note 4 applies to both seat cushion and mattress testing.

Note 5 requires the dynamic testing of seat cushions and mattresses to help ensure that they retain their fire retardant characteristics after they have been in service for a period of time. As provided in the final rule, Note 5 expressly subjected seat cushions and mattresses to an endurance test specified in ASTM D 3574, Test I_2 (Dynamic Fatigue Test by the Roller Shear at Constant Force) or Test I_3 (Dynamic Fatigue Test by Constant Force Pounding) both using Procedure B. Following publication of the final rule, a railroad stated that the size of the samples required to be tested differed for the ASTM D 3675 flammability test procedure specified for cushions and mattresses and the ASTM D 3574 dynamic test procedure specified in Note 5. Accordingly, FRA has revised Note 5 to make the samples the same size so that flammability testing may be conducted on the same sample that has undergone dynamic testing.

Notes 6, 7, and 8 remain unchanged from the final rule. These notes, along with Note 5, are now expressly referenced in Note 3 to make clear that they apply to seat and mattress assembly testing as specified in Note 3.

Fabrics

In the final rule, the ''Fabrics'' category included fabrics used in seat upholstery, mattress ticking and covers, and curtains. These items were formerly identified in the function of material column for the category ''Passengers seats, Sleeping and dining car components'' in the 1989 FRA guidelines and the NPRM. The word ''All'' under function of material in the final rule eliminated confusion as to what must be tested; window shades, draperies and also wall coverings were required to be tested if composed of fabric. *See* 64 FR 25648–25649. Nevertheless, instead of stating that the test performance criteria apply to ''All'' fabrics, FRA has amended the table so that the criteria apply to fabrics used in or for items expressly identified in the guidelines and NPRM—that is, seat upholstery, mattress ticking and covers, and curtains—as well as in those items discussed in the preamble to the final rule—draperies, wall coverings, and window shades. This amendment is intended to make the rule more consistent with the format of FRA's fire safety guidelines, while clearly addressing the potential contribution to fire and smoke posed by fabric window shades and wall coverings, and avoiding any terminology confusion between ''curtains'' and ''draperies.''

As noted in the preamble to the final rule, the 1989 FRA guidelines limited smoke emission performance for ''coated'' fabrics, typically vinyl-based upholstery, to a Ds of 250 and ''uncoated'' fabrics to a Ds of 100—both at 4 minutes. *See* 64 FR 25649. It was determined that a uniform Ds limit of 200 at 4 minutes for smoke emission would be appropriate for both classes of fabrics, based in part on the known performance of the range of fabrics available and the definition of coated and uncoated used by the ASTM. Moreover, FRA noted that allowing a higher smoke emission performance standard for coated fabrics—more than twice that allowed for uncoated fabrics—provides an inconsistent level of safety on the basis of the fabric used and that an NFPA 130 committee had accepted a recommendation for the identical change in its own standard. *Id.*

In its petition for reconsideration, LTK raised concern that smoke emission limits for ''uncoated'' fabrics have been increased for seat upholstery, mattress ticking, covers and curtains to a Ds of 200 at 4 minutes. LTK believed that this represented a significant increase in allowable smoke emission, noting the amount of fabric (bedding, curtains, chairs) contained in a sleeping car or intercity coach. LTK stated that the original guidelines recognized the performance difference between cloth and vinyl upholstery, and that the distinction must remain. LTK did recommend changing the terminology from ''coated'' and ''uncoated'' as used in the 1989 FRA guidelines to ''cloth'' and ''vinyl,'' respectively, citing confusion and attempts by suppliers to have materials accepted at higher smoke emission levels. Bay State raised similar concerns, noting in particular that raising the smoke emission limit for cloth fabrics could double the allowable smoke emission in sleeping cars, potentially allowing the introduction of more toxic fumes.

FRA continues to believe that allowing a higher smoke emission limit for fabrics based on the type of fabric used provides an inconsistent level of safety. Further, since an ASTM test procedure is specified for evaluating smoke emission, it has been considered appropriate to use the ASTM definition of ''coated'' material, *i.e.,* a flexible material composed of a textile fabric and an adherent polymeric material applied to one or both surfaces. This definition is more inclusive than one essentially describing a ''coated'' fabric as vinyl, thereby creating the possibility that a greater number of materials would be evaluated against the higher Ds limit of 250. Moreover, as part of NIST's ongoing fire safety research, NIST evaluated test data from samples of fabrics intended for use in an Amtrak passenger car and found a variation of Ds levels from 57 to 175 at 4 minutes. (*See* ''Fire Safety of Passenger Trains: Phase I Material Evaluation (Cone Calorimeter),'' DOT/FRA/ORD–99/01–DOT–VTNSC–FRA–98–26, January 1999, cited in the final rule at 64 FR 25554, note 1.) Overall, NIST found a variation of Ds levels for all materials (not just fabrics) of between 12 and 509, with nearly half of the materials tested falling between 100 and 200. Consequently, requiring a Ds of 100 at 4 minutes may eliminate the use of many currently used materials in rail passenger cars, including certain cloth material. Although FRA is leaving the smoke emission limits unchanged from the final rule, the petitioners concerns may be examined further in Phase II of the rulemaking.

Other Vehicle Components

Through the final rule FRA established the category ''Vehicle Components'' to include the majority of those materials used in items formerly listed in the 1989 FRA guidelines and NPRM under the categories of ''Panels,'' ''Flooring'' (except structural), ''Insulation,'' ''Elastomers,'' ''Exterior Plastic Components,'' and ''Component Box Covers.'' The final rule also introduced the subcategory ''All [vehicle components] except flexible cellular foams, floor coverings, light transmitting plastics, and items addressed under other specific categories'' that effectively required all materials under the ''Vehicle Components'' category to meet specific flammability and smoke emission performance criteria, unless exempted by Note 10. Following publication of the final rule, however, passenger railroads raised concern that requiring the testing of all materials significantly departed from FRA's proposal in the NPRM.

As an initial matter, FRA is renaming the ''Vehicle Components'' category, ''Other Vehicle Components.'' Everything identified in the table is a vehicle component, of course; but FRA

is generally retaining the category's name to maintain the format of the final rule's table as far as practicable for the benefit of the regulated community.

More important, FRA recognizes that the final rule expanded the flammability and smoke emission performance testing requirements for rail car components, consistent with the intent of part 238 to cover all aspects of passenger equipment fire safety. On reconsideration, however, FRA is generally limiting the application of such test performance criteria to materials expressly identified in the 1989 FRA guidelines and the NPRM. FRA is largely doing so by amending the subcategory of ''All [vehicle components] except flexible cellular foams, floor coverings, light transmitting plastics, and items addressed under other specific categories'' to specifically identify the type of items subject to the required flammability and smoke emission test performance criteria. Most of these items were included in Note 9 to the final rule and were formerly identified in the category and function of material columns of the 1989 FRA guidelines and NPRM Appendix B table. These amendments restore these items to the body of the table following their removal due to the reorganization and streamlining of the table for purposes of the final rule. These items consist of materials used as, in, or for seat and mattress frames; wall and ceiling panels; seat and toilet shrouds; tray and other tables; partitions; shelves; opaque windscreens; end caps; roof housings; and component boxes and covers. In the final rule, Note 9 also identified ''HVAC ducting'' and ''thermal and acoustic insulation'' as items subject to testing. However, these items are now addressed elsewhere in the table due to differing test performance criteria, as discussed below.

FRA notes that it has expressly amended the rule as stated in revised Note 9 to exclude signage from any specific flammability or smoke emission test performance criteria. This exclusion applies to all signage, whether or not the signage conveys emergency or safety information or is semi-permanently affixed to the car as, *e.g.,* a wall panel. As stated in a December 13, 2000 letter to APTA and Amtrak, FRA determined that members of the public could have been confused as to whether the NPRM would make signage used in railroad passenger cars and locomotive cabs subject to specific Federal performance standards for flammability and smoke emission. (A copy of this letter has been placed in the public docket for this rulemaking.) FRA is therefore amending the rule to exclude signage from any such specific performance standards at this time, pending further public input in Phase II of the rulemaking.

None of the changes discussed above alter the pre-existing, fire safety analysis requirements of § 238.103 to consider the safety of a rail car as a whole and identify and address potential fire safety hazards, pursuant to which railroads are still required to consider the flammability and smoke emission performance characteristics of the materials that they place in their passenger equipment, including signage. As a result, railroads remain responsible for considering the fire safety characteristics of the signage that they place in their equipment to ensure that the type, size, and location of the signage, exposure of the signage to potential ignition sources, the railroad operating environment, and other factors do not create an unacceptable fire safety risk. FRA is likewise making clear elsewhere in this Notice that, pursuant to § 238.103, railroads are still required to consider the fire safety characteristics of other materials used in their passenger equipment, even if the materials are no longer specifically addressed by the requirements of Appendix B, to avoid creating an unacceptable fire safety risk. FRA intends to establish specific flammability and smoke emission performance requirements for signage in Phase II of the rulemaking.

Note 10 provides that testing of miscellaneous, discontinuous small parts is not required if such parts do not contribute materially to fire growth and the surface area of any individual small part is less than 16 square inches (100 cm^2) in end use configuration. A fire hazard analysis is required that considers both the quantity of the parts (*e.g.,* limited) and the location of the parts (*e.g.,* at discontinuous or isolated locations, or both), as well as the vulnerability of the parts to ignition and contribution to flame spread. In the preamble to the final rule, FRA cited grommets used on seats or window shades as examples of small, discontinuous parts that present an insignificant fire threat and could logically and safely be exempted from testing. *See* 64 FR 25649. In contrast, FRA explained that materials such as those used to produce wire ties of which hundreds or thousands may be included in a single car to mount power and low voltage cable bundles are not exempted from testing. *Id.*

In its petition for reconsideration, LTK advised against describing a small part by its surface area alone (less than or equal to 16 square inches) and recommended that mass also be considered, citing the number of wire ties in a rail car. Bay State shared LTK's concern, noting in particular that tie wraps for wires number in the thousands in a rail car and are fabricated for the general construction industry from polymers that exhibit flaming running and dripping. The petitioner also stated that the rule should set a total limit on the weight of unregulated elastomeric material permitted per vehicle, noting that elastomers can emit a significant amount of smoke when combusted. However, neither petitioner recommended any specific limits relating to weight or mass. In contrast to the concern of these petitioners, Bombardier stated in its petition for reconsideration that it is unclear how such small individual parts like tie wraps that are distributed throughout a rail car can play such a significant role as to contribute to a localized fire.

FRA makes clear that consideration of the mass of small parts for purposes of Note 10 is required by the fire hazard analysis specified in the Note. However, FRA has not imposed a more specific requirement concerning the weight or mass of small parts, and thus will continue to allow a railroad to make an appropriate determination based on its own fire hazard analysis. As a separate matter, due to the revisions to the table, ties that are used to bundle, wrap, or, literally, tie wires and cables are no longer subject to the flammability and smoke emission standards specified in Appendix B. Nevertheless, use of such ties shall continue to be evaluated by a railroad, as appropriate, in accordance with the fire safety analysis requirements in § 238.103. FRA is concerned about the sheer numbers of such ties in a rail car and their potential to ignite other materials and contribute to fire growth, overall. Such ties are commonly made of plastic, because of plastic's non-conductive nature, and may also be made of other material such as cloth.

In the final rule Note 11 was intended to permit use of the ASTM E 1354 test procedure to measure flammability characteristics for small parts as an alternative to the test procedures otherwise specified in the table for measuring flammability characteristics, such as ASTM E 162. Consequently, the use of the word ''shall,'' instead of ''may,'' in Note 11 of the final rule, was incorrect. The ASTM E 1354 test procedure is only intended to be an alternative—not a required-test procedure. FRA has amended the rule accordingly. In addition, FRA has merged Note 12 of the final rule with Note 11. Note 12 permitted use of the

ASTM E 1354 test procedure to measure smoke generation for small, discontinuous parts as an alternative to the ASTM E 662 test procedure otherwise specified in the table. *See* 64 FR 25703. As amended, Note 11 more clearly states FRA's intent to permit use of the ASTM E 1354 test procedure for small parts as an alternative to both the flammability and smoke emission test procedures otherwise specified in the table. Such small parts may be evaluated for flammability and smoke emission according to either Note 11, as amended, or the test procedures otherwise specified in the table. Of course, small parts may be exempt from testing pursuant to Note 10.

The test procedure referenced in Note 11 is ASTM E 1354, ''Standard Test Method for Heat and Visible Smoke Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter'' (*i.e.,* Cone Calorimeter). This measures heat release rate at a prescribed heat flux using oxygen depletion techniques and produces information including data for time of ignition (t_{ig}) and peak heat release rate ($\dot{q}''_{max}$). The quotient of $t_{ig}/\dot{q}''_{max}$ has been evaluated as part of the current FRA-funded NIST research program, as well as in other research, and has been shown to reliably predict ignitability. Ignitability is an important consideration for certain small parts used in rail passenger cars. Because of their small size and end uses, small parts may be more significant from an ignition perspective than from a flame spread perspective. *See* 64 FR 25649. The final rule required that small parts tested in accordance with ASTM E 1354 meet the pass/fail criterion: $t_{ig}/\dot{q}''_{max}$ is less than or equal to 1.5 under stipulated exposure conditions.

In its petition for reconsideration, Bombardier noted that a material that neither ignites nor burns would nevertheless fail the performance criterion specified in Note 11 of the final rule. According to Bombardier, if the time to ignition (t_{ig}) approaches infinity (*i.e.,* does not ignite) and the peak heat release rate ($\dot{q}''_{max}$) is minimal (*i.e.,* does not burn) then the ratio $t_{ig}/\dot{q}''_{max}$ becomes significantly larger than 1.5. Bombardier therefore recommended revising this performance criterion and proposed other changes to Note 11. In its petition for reconsideration, GBH pointed out that the performance criterion cited in Note 11 was proper except that FRA had inverted a key figure, recommending that materials tested in accordance with ASTM E 1354 should meet the performance criterion: $t_{ig}/\dot{q}''_{max}$ is greater than or equal to 1.5, not less than or equal to 1.5.

FRA agrees that the performance criterion was incorrectly stated in Note 11 and has revised the Note accordingly. As amended, Note 11 states that materials tested in accordance with ASTM E 1354 shall meet the heat release rate performance criterion of $\dot{q}''_{180} \leq 100$ kW/m^2. That is, the average heat release rate over 180 seconds ($\dot{q}''_{180}$) shall be less than or equal to 100 kilowatts per square meter. This heat release rate criterion, and the smoke emission criterion discussed below, are based on the results of NIST research on a range of materials in current use in passenger rail cars as part of Phase I of the FRA-sponsored fire safety research study of passenger rail cars, discussed above and at 64 FR 25554. These performance criteria use comparable measures to the 1989 FRA guideline and NPRM performance criteria. For all of the materials tested by NIST which met the original guideline criteria, the average heat release rate over a 180-second period was 86 kW/m^2. Consequently, FRA believes that specifying a heat release rate acceptance criterion of $\dot{q}''_{180} \leq 100$ kW/m^2 is appropriate for testing materials used in small parts. FRA has amended the rule accordingly.

As noted above, FRA has combined Note 12 of the final rule with Note 11 since the intent is to permit the testing of small parts using ASTM E 1354 as an alternative to both ASTM E 162 (or the flammability test procedure otherwise specified in the table) and ASTM E 662 for smoke generation. In their petitions for reconsideration, Bombardier and LTK observed that Note 12 in the final rule did not define a pass/fail criterion for smoke generation using the ASTM E 1354 test procedure. In addition, Bay State maintained in its petition that ASTM E 1354 should not be used to measure smoke generation until its results are correlated with ASTM E 662 or the FRA provides an acceptance standard. Nevertheless, the petitioner did state that ASTM E 1354 should be adopted as a governing standard in that it provides qualitative heat release and smoke emission data.

FRA acknowledges that the final rule did not expressly define a pass/fail criterion for smoke generation of small parts in Note 12. ASTM E 1354 smoke generation data is stated in terms of ''specific extinction area,'' which is a measure of the attenuation of light by soot particles in a flowing system using a monochromatic light beam. The primary benefit of specific extinction area is that it can be used in calculations of smoke density (and thus visibility) within a passenger car for purposes of an emergency evacuation. Specific optical density cannot be used as effectively in this way. As part of the NIST research using the ASTM E 1354 test procedure to evaluate materials used in passenger rail cars, discussed above, NIST found that for all of the materials tested which met the 1989 FRA guideline criteria, the average specific extinction area (σ_f) over a 180-second period was 468 m^2/kg. Consequently, FRA believes that limiting the overall average specific extinction area in this time period to 500 m^2/kg is appropriate for testing materials used in small parts. FRA has amended the rule accordingly to specify this pass/fail criterion. FRA notes that, while it should be possible to correlate specific extinction area data with specific optical density data from the ASTM E 662 test procedure, FRA believes that it is premature to do so here but will consider it in Phase II of the rulemaking.

Finally, GBH stated in its petition for reconsideration that if floor coverings are to be tested using the ASTM E 1354 test procedure, the applied heat flux should not be 50 kW/m^2 as specified in Note 11. The petitioner maintained that such a heat flux will not be encountered by a floor environment until well after flashover, which the petitioner defined as the moment when the heat flux to the floor reaches 20 or 25 kW/m^2. According to the petitioner, a more realistic heat flux would be 25 kW/m^2, which can be encountered by floor covering materials just when flashover occurs and is consistent with studies of fire performance of carpeting materials. FRA believes that because use of the ASTM E 1354 test procedure in Note 11 is limited to materials less than 16 square inches in end use configuration and floor covering in a passenger car or a locomotive cab will most likely have a greater surface area in end use, it is unlikely that the option to use the ASTM E 1354 test procedure will apply to the testing of floor covering. As a separate mater, FRA notes that the requirement for a retainer frame for specimens tested according to ASTM E 1354 was inadvertently omitted from the final rule. FRA has amended the rule accordingly.

Flexible Cellular Foams Used in Armrests and Seat Padding; Thermal and Acoustic Insulation; and HVAC Ducting

In the final rule, flexible cellular foam products not used for cushion and mattress applications were included in the ''Flexible cellular foams'' subcategory to address their unique fire-related properties. These foam products are used for armrests, seatback ''crash''

padding, and thermal and acoustic insulation. In the preamble to the final rule, FRA noted in particular that NIST researchers in 1983 had found that foam armrests assisted flame spread from seat cushions to wall liners, and Note 8 of the 1989 FRA guidelines recommended that foam armrests be tested to the same performance criteria applicable to seat cushions to limit flame spread. *See* 64 FR 25649–50. Thermal and acoustic insulation materials not made from flexible cellular foams were permitted to be tested under the final rule to the less stringent test performance criteria applicable to the ''All [vehicle components] except flexible cellular foams * * *'' subcategory. *See* 64 FR 25702. Thermal and acoustic insulation materials were previously included as a separate category in the 1989 FRA guidelines with a recommended smoke emission (Ds) limit at 4 minutes of 100 using the ASTM E 662 test procedure. However, the NPRM did not expressly propose a smoke emission limit at 4 minutes for thermal and acoustic insulation materials, *see* 62 FR 49823, and FRA incorrectly stated in the final rule that the Ds limit for these materials at 4 minutes was intended to be 200 in the NPRM, when it should have been 100 to be consistent with the guidelines.

In their petitions for reconsideration, LTK and Bay State raised concern that FRA had degraded the test performance criteria for car body insulation from the 1989 FRA guidelines. Noting in particular the potential doubling of allowable smoke emission, the petitioners believed this to be significant because car body insulation represents a substantial amount of material in a railcar's floors, walls, ceilings, and air distribution ducts. They also found equally troubling that the smoke emission limit for HVAC ducting had been doubled from the guidelines as well, citing the importance of limiting the amount of smoke generated by a ventilation system in order to prevent the spread of smoke throughout a car. The final rule permitted HVAC ducting to have a Ds limit at 4 minutes of 200; whereas the 1989 FRA guidelines limited Ds to 100 at 4 minutes.

On reconsideration of the final rule, FRA agrees with the concerns raised by these petitioners as to the potential degradation from the guidelines of the test performance criteria for thermal and acoustic insulation, as well as for HVAC ducting. Consequently, FRA has amended the rule by restoring the function of material subcategories ''Thermal and acoustic insulation'' and ''HVAC ducting'' from the guidelines. The test performance criteria for these materials are now the same as those specified in the guidelines and are what FRA intended in the NPRM. FRA makes clear that these materials may no longer be evaluated to the criteria contained in another function of material subcategory. However, as discussed above, FRA is adding § 238.103(a)(3) to make provision for railroads that have relied on Appendix B of the May 12, 1999 final rule and already installed, ordered, or hold in inventory materials that meet the test performance criteria specified therein for acoustic and thermal insulation, as well as for HVAC Ducting. See the discussion of § 238.103(a)(3) for a fuller explanation.

As a separate matter, FRA is limiting the applicability of the flexible cellular foam test performance requirements to flexible cellular foams used in armrests and seat padding, to be more consistent with the guidelines and the NPRM. FRA is also making clear that Notes 4 and 6 apply to the revised flexible cellular foam subcategory.

Floor Covering

Note 12 relates to the use of carpet on walls and ceilings. Two petitioners observed that Note 12, formerly Note 13 of the final rule, stated only that carpeting used as a wall or ceiling covering be tested as a vehicle component, which did not convey any additional meaning since carpeting was already classified as a vehicle component. *See* 64 FR 25703. The purpose of this Note is to test in a different manner carpeting used to cover a wall or ceiling as opposed to carpeting used to cover a floor, due to differing safety concerns associated with the location of the carpet. For example, carpeting adhered to a vertical surface or a ceiling has been shown to promote flame spread in tests conducted by NIST of Amtrak car materials. FRA makes clear that carpeting applied to a wall or ceiling must be tested in accordance with the test methods and performance criteria generally applicable to wall and ceiling materials, instead of the test methods and performance criteria otherwise specified for floor covering. This is the same principle that was recommended in the 1989 FRA guidelines and proposed in the NPRM, but was inadvertently changed in the final rule text. Accordingly, carpeting used as a wall or ceiling covering shall be tested according to the ASTM E 162 and 662 test procedures utilizing the respective performance criteria of I_s less than or equal to 35 and D_s (1.5) less than or equal to 100 and D_s (4.0) less than or equal to 200, with application of Notes 1 and 2.

Note 13, formerly Note 14 of the final rule, remains unchanged, except for the reference to the newer version of ASTM E 648. FRA is incorporating such newer versions of the ASTM test standards referenced in the rule, as discussed above.

Light Diffusers, Windows and Transparent Plastic Windscreens

In the final rule, FRA established a new ''Light transmitting plastics'' function of material subcategory. Although the preamble to the final rule indicated that FRA considered light transmitting plastics to be windows, light diffusers and transparent plastic windscreens (effectively interior windows), consistent with construction industry and building code terminology, FRA did not expressly define the term in the rule text. *See* 64 FR 25650, 25702. In light of some confusion arising after publication of the final rule as to what materials were subject to the light transmitting plastics test performance criteria, FRA has amended the final rule by renaming the subcategory ''Light diffusers, windows, and transparent plastic windscreens.'' FRA makes clear that the flammability test performance criteria specified for this subcategory are applicable only to these identified items, as the criteria are less stringent than those applicable to any other vehicle component.

As stated in the Volpe Center report explaining the development of the original fire safety guidelines, the flammability ''acceptance limit recommends that all window and light diffuser glazing have an (I_s) [flame spread index] of 100 or less. This I_s is not consistent with the I_s of 35 or less required for all other sheet and panel materials but is necessary to allow for window and light diffuser glazing materials other than glass.'' (See ''Rationale for Recommended Fire Safety Practices for Rail Transit Materials Selection'' (''Volpe Center Report''), at p. 20, cited at 64 FR 25647, note 7, and placed in the public docket for this rulemaking.) At the time of the Volpe Center report, available clear plastic material could not comply with the more stringent flammability performance criteria generally specified for other materials, see Volpe Center Report at p. 21, including the prohibition on flame running and dripping. The use of plastic material in light diffusers and windows is desirable because it allows railroads to take advantage of the impact and shatter resistant qualities of plastics. In particular, windows in rail passenger cars and locomotive cabs are subject to specific impact resistance requirements

under the Safety Glazing Standards-Locomotives, Passenger Cars and Cabooses, 49 CFR part 223. The purpose of the Safety Glazing Standards is ''to provide minimum requirements for glazing materials in order to protect railroad employees and railroad passengers from injury as a result of objects striking the windows of locomotives, caboose and passenger cars.'' *See* 49 CFR 223.1; 44 FR 77352, Dec. 31, 1979. FRA has also noted the importance of glazing material toughness in helping to retain persons within the vehicles in the case of a derailment. When struck by an object, untreated glass windows could not only allow entry of the object into the passenger car or locomotive cab, posing a missile hazard to railroad passengers and employees, but the glass could shatter and thereby harm these persons. Similarly, untreated glass light diffusers would pose a hazard in a train derailment, for example, if they became dislodged from their assemblies and shattered.

In developing the final rule, FRA recognized that the 1989 FRA guidelines expressly subjected the same plastic material to differing performance criteria depending on whether the material was used as a ''windscreen,'' or as a ''window'' or ''light diffuser'' glazing material. For example, if classified as a ''windscreen,'' the guidelines limited the permissible flame spread to 35; if classified as a glazing material, the guidelines permitted flame spread as high as 100. (See ''Recommendations for revising the fire safety performance requirements in Federal Railroad Administration Notice of Proposed Rulemaking (NPRM) for Passenger Equipment,'' at p. 7, cited at 64 FR 25647, and placed in the public docket for this rulemaking.) However, FRA understood that railroads logically interpreted the guidelines to apply the same performance criteria to transparent plastics used in windscreens as to those in light diffusers and windows, as transparent windscreens are effectively interior windows. FRA removed the subcategory ''windscreen'' in preparing the final rule as part of FRA's effort to streamline the guideline and NPRM tables and eliminate differences in categorizing products that had led to the same product being acceptable if classified under one (sub)category but not acceptable if classified under another. Although opaque windscreens continue to be subject to the same performance criteria as recommended in the guidelines and proposed in the NPRM, FRA has clarified Appendix B to expressly accord transparent plastic windscreens the same treatment as windows and light diffusers.

As a related matter, Bay State's petition for reconsideration repeated a concern it had raised in commenting on the NPRM that the allowable performance criteria for window glazing and lighting lenses are too lenient, citing the location of these objects, their ease of ignition, and the Btu content of polycarbonate material. *See* 64 FR 25555. The petitioner as well as LTK raised particular concern that Note 14, formerly Note 15 of the final rule, excludes an exterior glazed window pane from any specific test performance criteria. These petitioners stated that this is especially problematic for vehicles that operate in tunnels or on elevated structures because an underfloor fire could produce flames which rise up the sides of a vehicle and ignite exterior window panels. Bay State recommended that for rail cars operating in tunnels inner window panes should be of a non-combustible material such as glass and outer window panes should be required to meet the specified performance criteria, believing that this would address FRA's impact resistance concerns for windows and promote fire safety at the same time.

FRA notes that, because of their thickness, rail car windows are not as easily ignitable when exposed to a heat source as a thinner material and believes that, during the time necessary for a window to fully combust, able-bodied vehicle occupants would be able to evacuate the vehicle if a means of escape were readily available. Of course, not all occupants may be able-bodied, especially after a collision or a derailment, nor may there be a means of immediate escape. Although FRA did not intend to make the performance criteria more stringent for window glazing than those recommended in the 1989 FRA guidelines, FRA does intend to examine the appropriateness of these criteria in Phase II of the rulemaking, taking into consideration the availability of materials that can comply with more stringent performance criteria and also possess favorable impact and shatter-resistant characteristics.

Elastomers

FRA has amended the rule by removing ''Elastomers'' as a function of material subcategory and restoring it as a category consistent with the 1989 guidelines and the NPRM. Likewise, FRA has restored the function of material subcategory for elastomers that identifies window gaskets, door nosings, diaphragms, and roof mats as items required to be tested. In addition, FRA has expressly identified seat springs as subject to the performance testing requirements as well, as stated in the preamble to the final rule. *See* 64 FR 25650.

FRA notes that LTK and Bay State recommended in their petitions for reconsideration that FRA provide guidance as to the application of the requirements of the final rule to elastomeric materials used in coupling mechanisms and truck suspensions (chevron springs, air bags, snubbers, etc.). LTK stated that these components do not meet the 1989 FRA guideline criteria, yet they represent a significant amount of combustible material under a vehicle's floor. However, as touched on above, FRA is amending the rule to limit application of the required test performance criteria only to certain elastomeric materials, as part of FRA's general response to the concern of passenger railroads that FRA significantly expanded the class of materials subject to specific flammability and smoke emission testing requirements. As a result, the rule does not subject all elastomeric material to specific test criteria, such as elastomeric material in coupling mechanisms and truck suspensions. For those railroads that have sought in good faith to comply with the final rule and generally subject all elastomeric material to flammability and smoke emission performance criteria, the products of such efforts should be considered favorably in the fire safety analyses required by § 238.103 to help demonstrate the safety of their vehicles. FRA will examine in Phase II of the rulemaking the concerns of the petitioners to specify standards for elastomeric materials used in coupling mechanisms, truck suspensions, and other elastomeric components not now addressed in Appendix B.

As stated in the preamble to the final rule, the flammability test method for elastomers was revised to reference ASTM C 1166-not ASTM C 542 as proposed in the NPRM. *See* 64 FR 25650. However, FRA incorrectly stated that ASTM C 1166 ''superseded'' ASTM C 542. *Id.* ASTM C 542, ''Standard Specification for Lock-Strip Gaskets,'' references ASTM C 1166, ''Standard Test Method for Flame Propagation of Dense and Cellular Elastomeric Gaskets and Accessories,'' as containing the flame propagation test procedure for lock-strip gaskets. Consequently, in the final rule FRA cited ASTM C 1166 as the direct source of the flame test procedure, removing the intermediate reference to ASTM C 542. Nevertheless, by removing the reference to ASTM C 542, FRA unintentionally removed the reference to the flame test performance

criteria specified in that standard. ASTM C 1166 does not contain flame propagation performance criteria itself, and the final rule did not specify flame propagation performance criteria other than ''Pass.'' As a result, FRA is amending the rule to specify what constitutes a passing test. For both dense and cellular elastomeric material, average flame propagation shall not exceed 4 inches (100 mm). This performance criterion is specified in ASTM C 542 and is thereby identical to that which was proposed in the NPRM. FRA has also corrected the rule by adding Note 1 to the ''Elastomers'' category, consistent with the 1989 FRA guidelines and the NPRM. Note 1 was unintentionally omitted from the final rule, as noted by FRA in a November 5, 1999 letter to Amtrak and APTA, cited above.

In their petitions for reconsideration, Bay State and LTK also recommended that Note 2 be applied to the requirements for elastomers. However, unlike the omission of Note 1, Note 2 was neither expressly proposed to apply to elastomeric material in the NPRM nor expressly applied to elastomers in the 1989 FRA guidelines when its text was formerly contained in Note 5. *See, e.g.,* 62 FR 49823–4. In developing the original fire safety guidelines, the Volpe Center wrote: ''Elastomers that meet the ASTM C–542 flammability standard have not, at present, been formulated to have low smoke emission properties. Therefore, no acceptance limit for smoke emission has been specified.'' *See* ''Volpe Center Report,'' at p. 24, noted above. Consequently, no smoke emission acceptance criteria for elastomers were specified in FRA's 1984 fire safety guidelines, *see* 49 FR 44584, and when FRA did recommend smoke emission acceptance criteria for elastomers in the 1989 FRA guidelines, FRA did not expressly reference the cautionary text in then-Note 5.

FRA recognizes that the ASTM E 662 test procedure for evaluating smoke emission provides that three tests are to be conducted under flaming exposure and three tests under non-flaming exposure (for a total of six tests). See paragraph 10.1 of the test procedure. Note 2 states that the specified smoke emission performance criteria apply to the exposure that produces the most smoke. However, FRA is not requiring that smoke emission performance for elastomers be limited to the exposure which generates the most smoke, in light of the seemingly uncertain historical basis for such a requirement. FRA understands the petitioners' concerns that the elastomer industry is able to supply elastomers that comply with Note 2, and in Phase II of the rulemaking FRA will consider the recommendation to apply Note 2 to elastomers.

FRA has eliminated as unnecessary former Note 16 of the final rule. As specified in the first sentence of former Note 16, only elastomeric parts with surface areas equal to or more than 16 square inches in end use configuration were required to be tested using ASTM C 1166; elastomeric parts with smaller surfaces areas were not required to be tested using this procedure. *See* 64 FR 25703. However, as FRA is making clear above, Note 10 provides that certain vehicle components less than 16 square inches in end use configuration may be exempt from performance testing, and Note 11 specifies alternative testing requirements for small parts less than 16 square inches in end use. The first sentence of former Note 16 has therefore been eliminated as redundant. The second sentence of former Note 16 has likewise been eliminated as redundant because the items formerly listed there are now expressly identified in the function of material subcategory for ''Elastomers.''

Wire and Cable

In the final rule, FRA addressed the subject of wire and cable by adding a new category in the table which required smoke and flammability emission screening for wire and cable insulation. The preamble to the final rule cited the category's importance due to the greater quantities of wire and cable used in electrically-powered intercity and commuter rail passenger cars, and was subdivided between requirements for ''Low voltage wire and cable'' and ''Power cable.'' The division of wire and cable into low voltage and power usages is common and reflects the fact that low voltage wire and cable (for communication or control uses, *e.g.*) carry insufficient energy to ignite the wire or cable under a general fault condition. Thus, low voltage wires and cables constitute a fuel when exposed to an external ignition source but not otherwise an ignition hazard in themselves. Because of their low energy, low voltage wires and cables generally operate near ambient temperatures (as elevated temperatures affect their performance). In contrast, power cables generally carry sufficient energy to ignite under fault or overload conditions and usually operate at higher temperatures up to the rating of the insulating materials used. As a result, most electrical installations require that low voltage cables be physically separated from power cables or that all cables be insulated for the highest voltages present. The fire performance test methods specified in the final rule by the Institute of Electrical and Electronics Engineers, Inc. (IEEE), Insulated Cable Engineers Association (ICEA), National Electrical Manufacturers Association (NEMA), and Underwriters Laboratories Inc. (UL) have been specified in NFPA 130 since 1983.

Smoke Emission

Concern has been raised as to the unavailability of wire and cable complying with the smoke emission performance requirements in the final rule. In a letter to FRA, the Northeast Illinois Regional Commuter Railroad Corporation (Metra) stated that it has been unable to find cables meeting the smoke emission performance criteria specified in the final rule for all control and communications applications in 300 new passenger cars it is purchasing. (A copy of this letter has been placed in the public docket for this rulemaking.) Metra specifically identified four types of cables that are used to transfer electric power or for electrical communication between the cars: 480 Volt power cable; door signal cable; communications cable; and 27 pin jumper cable. Metra explained that, although it has been informed that the cables meet the flammability test performance criteria of ANSI/IEEE Std. 383, the cables exceed the ASTM E 662 smoke emission performance criteria specified in the final rule for non-flaming exposure. According to Metra, the cables were observed to have Ds levels between 160 and 180; whereas the final rule limited non-flaming Ds levels to 75. *See* 64 FR 25702. Metra added that the cable manufacturer is working to develop cables meeting the final rule's smoke emission performance requirements, but noted that cables developed for fire safety compliance may be ill-suited electrically and mechanically for application in trains.

Upon reconsideration of the final rule, FRA recognizes that the test performance criteria for smoke emission may not codify a settled industry standard in the way FRA had believed. FRA does note that in 1991 APTA published ''Performance Specifications for Electric Wire and Cable Used in Underground Transit Systems'' (''Performance Specifications'') to limit wire and cable smoke, flammability, and toxicity characteristics under fire conditions. These specifications had been developed in cooperation with the International Union of Public Transport (UTIP) and contain similar tests and performance criteria, including the ASTM E 662 smoke emission test, to

those in the final rule. (A copy of the Performance Specifications, which is in two parts, has been placed in the public docket for this rulemaking.) Yet, the APTA/UTIP Performance Specifications may allow higher smoke emission levels than those specified in the final rule. (See Performance Specifications, Part 1-Requirements, Table 6.2, p. 23.) FRA also recognizes that smoke emission performance requirements for wire and cable were not expressly proposed in the NPRM, and FRA did not have the benefit of expressly inviting public comment on the appropriateness of the standards.

Consequently, FRA has decided to amend the rule to remove specific smoke emission performance requirements for wire and cable from Appendix B. FRA believes it more appropriate to establish specific requirements in Phase II of the rulemaking with the advice of the Passenger Equipment Safety Standards Working Group. Moreover, as part of the fire safety research effort previously described that is being conducted by NIST, wire and cable fire performance specifications and standards will be reviewed to provide further guidance and information to FRA for consideration during Phase II of the rulemaking. In the interim, FRA will allow each railroad to determine appropriate smoke emission performance criteria for wire and cable as part of its fire safety analyses of its passenger equipment pursuant to § 238.103. In this regard, Metra stated that it had conducted a system-wide fire safety analysis and that its car manufacturer had conducted a fire safety analysis for the new cars being procured. In both of these analyses, Metra explained that the trainline cabling was found to be acceptable for use.

FRA notes that it is important for overall safety design to recognize, as the above APTA/UTIP specifications do in particular, that wire and cable must not be solely evaluated with respect to their characteristics under fire conditions. Wire and cable should also be evaluated with respect to their intended applications including standard electrical, mechanical, environmental, and installation requirements. See Performance Specifications, Part 1—Requirements, at p. 6. Moreover, requirements for electrical system safety are specified in §§ 238.225 and 238.425 of the final rule. The passenger cars Metra is purchasing are subject to the Tier I passenger equipment electrical system safety requirements in § 238.225, which addresses the safety of conductors, the main battery system, power dissipation resistors, and electromagnetic interference and compatibility.

Further, although the 1989 FRA guidelines did not include specific tests and performance criteria for wire and cable flammability and smoke emission, the guidelines did cite two series of research reports sponsored by the FTA related to wire and cable combustibility which contain information pertinent to the selection and specification of electrical insulation. These reports have been placed in the public docket for this rulemaking, and were cited in the FTA's 1984 fire safety guidelines, *see* 49 FR 32482; Aug. 14, 1984. Extensive test programs were conducted; however, these studies did not develop or recommend specific fire safety performance criteria for wire or cable insulation. The authors did note that the size and construction of the wire and cable themselves have a significant impact on flame spread and smoke emission characteristics and therefore provided relative rankings on wire and cable fire safety.

FRA notes that the potential contribution of wire and cable to smoke emission was raised by Albemarle Corporation and Equistar Chemicals, L.P., in letters to FRA following publication of the final rule. (Copies of both letters have been placed in the public docket for this rulemaking.) Both companies stated that the amount of wire and cable in rail cars is increasing and that it is important to ensure that wires and cables meet some smoke emission limit, recommending use of the ASTM E 662 smoke emission test procedure. Yet, citing the National Electrical Code, they suggested that cables that are already listed as ''limited smoke'' (by UL 1685) or ''low smoke'' (by NFPA 262) be permitted for use without additional individual testing. FRA makes clear that a railroad may use, as appropriate, wire and cable complying with UL 1685 or NFPA 262, as recommended above, for purposes of evaluating smoke emission. In light of the need to limit smoke emission from wire and cable, FRA intends to establish specific smoke emission performance limits for wire and cable in Phase II of the rulemaking.

Flammability

Particular concern has been raised as to the flammability test performance standards for low voltage wire and cable specified in the final rule. In its letter to FRA, Metra stated that joint standard NEMA WC 3/ICEA S–19 was rescinded in 1996 and that neither NEMA nor ICEA offer an alternative. Metra contended that this standard is unavailable for use in the wire and cable industry and has been of no benefit in complying with the fire safety performance criteria. Further, Metra stated that standard UL 44 does not apply to its application as it deals with CPE rubber cabling exclusively, and that standard UL 83 does not apply to wires smaller than 14AWG through 200KC MIL wire. Metra explained that these concerns have made it impossible for it to define the proper test method for small size wires and cables such as digital computer cables and antenna cables.

As touched on above, the flammability requirements concerning wire and cable in the final rule are virtually identical to those specified in NFPA 130. (*See* Section 4–2.5, Electrical Insulation, 1995 Edition; section 5–2.5, 1997 Edition). The scope of NFPA 130 has been expanded to include passenger rail cars as well as rail transit vehicles, and a revised NFPA 130 was published in 2000 with the same wire and cable fire performance requirements as when NFPA 130 was first published in 1983 for fixed guideway transit systems. (*See* Section 5–2.5 of the 2000 Edition, a copy of which has been placed in the public docket for this rulemaking.) In promulgating the final rule, FRA believed that it was codifying a settled industry standard by incorporating these NFPA wire and cable fire performance requirements. However, information available to FRA indicates that joint standard NEMA WC 3/ICEA S–19, as referenced by the NFPA, has been withdrawn.

FRA understands that NEMA and the ICEA have replaced NEMA WC 3/ICEA S–19 with other standards, the most similar of which for consideration here is NEMA WC 70/ICEA S–95–658, ''Standard for Nonshielded Power Cables Rated 2000 Volts or Less for the Distribution of Electrical Energy.'' (A copy of this standard has been placed in the public docket for this rulemaking.) This NEMA/ICEA standard applies to materials, constructions, and testing of 2000 Volt and below nonshielded thermoplastic, crosslinked polyethylene, and crosslinked rubber insulated wires and cables which are used for the transmission and distribution of electrical energy. Paragraph 6.8 of the standard concerns flame tests and specifies two vertical flame tests. Of these tests, vertical flame test type B as specified in paragraph 6.8.3 is virtually identical to the flame test specified in paragraph 6.19.6 of NEMA WC 3/ICEA S–19, as referenced in the final rule.

Nevertheless, FRA recognizes that the final rule's flammability performance

requirements for wire and cable were not expressly proposed in the NPRM. As a result, even though FRA incorporated flammability performance standards specified in NFPA 130, FRA did not have the benefit of expressly inviting public comment on whether such standards were appropriate as Federal requirements. Although information available to FRA indicates that most of the concern as to the appropriateness of these flammability standards relates to low voltage wire and cable, and not to power cable, FRA has decided to amend the rule to remove specific flammability performance requirements for wire and cable from Appendix B, as well. FRA intends to establish specific fire safety performance requirements for wire and cable in Phase II of the rulemaking with the advice of the Passenger Equipment Safety Standards Working Group. In the interim, FRA will allow each railroad to determine appropriate flammability performance criteria for wire and cable as part of its fire safety analyses of its passenger cars and locomotives pursuant to § 238.103. For purposes of conducting these analyses, FRA advises railroads to use the test methods specified in NEMA WC 70/ICEA S–95–658, paragraph 6.8.3; UL 44 and 83; and ANSI/IEEE Std. 383, section 2.5, as appropriate in evaluating the flammability performance of the wire and cable they use in their passenger cars and locomotives. Of course, as mentioned above, it is important for overall safety design to recognize that wire and cable must not be solely evaluated with respect to their characteristics under fire conditions. Railroads should also be mindful that requirements for passenger equipment electrical system safety continue to apply as specified in §§ 238.225 and 238.425 of the final rule.

Additional Issues for Phase II

For purposes of advancing discussion of wire and cable flammability performance standards in Phase II of the rulemaking, FRA notes that GBH, in its petition for reconsideration of the low voltage wire and cable requirements, stated that NEMA WC 3/ICEA S–19, paragraph 6.19.6, is limited to a fire test on a single wire, while there are many requirements in the UL 44 and UL 83 test procedures. The petitioner sought clarification whether the final rule subjected low voltage wire and cable to all of the requirements of the UL 44 and UL 83 test procedures, or only to the fire tests. FRA intended that only the fire performance tests apply.

Further, the petitioner stated that the NEMA/ICEA test procedure is much less severe than the ANSI/IEEE test procedure specified for power cables in the final rule. The petitioner explained that, although the latter test is sometimes unsuitable for very thin wires, such thin wires are desirable because they weigh less and occupy less space. The petitioner stated that the National Electrical Code accepts the principle of allowing cables to meet more severe fire tests in lieu of less severe specified tests, and that NFPA 130 also permits such substitutions. The petitioner therefore recommended that FRA allow a cable meeting the requirements for a more severe test such as the ANSI/IEEE standard to substitute for a cable meeting a small-scale vertical test such as that specified in the NEMA/ICEA standard. The petitioner believed that this would ensure that fire safety is not dependent on cable thickness alone but rather on actual fire performance. FRA notes that the flammability test for power cables in the final rule was intended to address the greater hazard posed by the higher voltages running through the cables rather than the source of fuel that the cables possess. The test is necessarily more severe. As a result, FRA intended that a low voltage wire or cable meeting the flammability test performance standards specified in the final rule for a power cable would comply with the wire and cable flammability test performance standards.

Moreover, with regard to the final rule's requirements for power cables, GBH stated that although ANSI/IEEE Std. 383 is correct in principle, as it is a medium to large scale test assessing flame spread, it has three disadvantages: (1) It is an older version of the same test better addressed in ASTM D 5424 (for flame spread and smoke release) and ASTM D 5537 (for flame spread and heat release), or by UL 1685, and ANSI/IEEE Std. 383 can be conducted using an ''oily rag'' as the ignition source (instead of a well-characterized gas burner); (2) it measures only flame spread (instead of heat and smoke release); and (3) it cannot fully differentiate between those cables possessing good fire performance and those possessing only mediocre fire performance in that it measures only flame spread. The petitioner believed that the ASTM pair of tests can be conducted together in a single burn and better differentiate product performance by assessing smoke and heat release rates. Thus, the petitioner recommended replacing the ANSI/IEEE Std. 383 and ASTM E 662 tests with the ASTM D 5424 and 5537 test procedures and specified pass/fail criteria. This recommendation will be considered in specifying appropriate standards in Phase II of the rulemaking.

Additionally, GBH stated that in Note 18 of the final rule, section 2.5 of ANSI/IEEE Std. 383 describes neither a circuit integrity test nor the means for testing circuit integrity. GBH mentioned that transit authority specifications have not included circuit integrity requirements with the flame test and that cables used in rail transit applications often do not meet the circuit integrity requirements. The petitioner recommended that the rule include a test that requires one conductor of the cable to continue transmitting electricity during the first 5 minutes of the test, as verified by a flashlight bulb remaining lit for the entire period, or otherwise specify a fully developed circuit integrity test. FRA notes that maintaining circuit integrity during fire exposure is only important for cables that have or affect a safety function, such as braking control and emergency lighting or communication. However, a test that demonstrates that circuit continuity is maintained (*e.g.,* as verified by a lit flashlight bulb) may not be appropriate to test circuit integrity for a cable used to transmit data, which, when exposed to fire, would need to continue carrying a data stream without dropping enough bits of data to corrupt the communication. Since the circuit integrity test requirements in the final rule applied only to power cables—and not to lower voltage wire and cable used to transmit data—FRA believes that the flashlight bulb performance standard recommended by the petitioner would have been appropriate. However, FRA did not intend to impose a more specific circuit integrity test method, as the requirement was virtually identical to the power cable circuit integrity test standard contained in NFPA 130, which also does not specify a test method. In considering wire and cable flammability performance requirements in Phase II of the rulemaking, FRA will examine whether a specific circuit integrity test requirement should be applied to low voltage wire and cable, in addition to power cable.

As a final issue, Bay State maintained that the final rule did not apply flammability standards to wire and cable designed to carry electrical current between 64 Volts and high voltage power cable, noting that rail cars contain wire and cable that carry power with voltages between 120 and 440. The petitioner's reference to both 64 Volts and 120 Volts is not clear, however, since both are seemingly suggested as the voltage cut-off for classifying a wire or cable as low voltage. As explained above, the wire and cable fire

performance standards in the final rule closely followed the wire and cable fire performance standards specified in NFPA 130. NFPA 130 itself identifies low voltage wire and cable as carrying voltages less than 100V ac and 150V dc (see Section 5–2.5 Electrical Insulation, 1997 and 2000 Editions) and references the National Electrical Code (NFPA 70). FRA did not intend to vary from the electrical classification of wire and cable specified by the NFPA. To the extent any wire or cable was in fact not subject to specific fire performance standards in Appendix B, it is because such wire or cable is not subject to specific fire performance standards by NFPA 130. Appropriate classifications for wire and cable will be considered further in Phase II of the rulemaking.

Structural Components

In the final rule, FRA established the new category ''Structural Components'' to address the structural integrity of floor assemblies and other structural elements. *See* 64 FR 25650. This category and Notes 19, 20, and 21 of the final rule originated from the structural flooring function of material subcategory in the 1989 FRA guidelines, as well as Note 6 of the guidelines. Note 19 of the final rule specified that ''[p]enetrations (ducts, etc.) shall be designed to prevent fire and smoke from entering a vehicle, and representative penetrations shall be included as part of test assemblies.'' *See* 64 FR 25703. In seeking reconsideration of the final rule, Bay State and LTK requested that FRA specify what constitutes ''prevent[s] * * * smoke from entering a vehicle'' within the meaning of this Note. In particular, Bay State raised concern that if it means anything less than no smoke then FRA must specify a test method and standard for acceptance for purposes of clarity.

FRA notes that the wording of Note 19 of the final rule is similar to that recommended in the 1989 FRA guidelines and proposed in the NPRM, which state that penetrations ''be designed against acting as passageways for fire and smoke.'' NFPA 130 also uses similar wording, substituting the term ''conduits'' for ''passageways.'' FRA has revised this Note, now Note 15, using the original wording recommended in the guidelines and proposed in the NPRM. FRA is not imposing here a more detailed test method or standard for acceptance, however, believing it best to explore such matters in Phase II of the rulemaking. Nevertheless, this requirement is necessarily connected to a railroad's fire safety analysis of a vehicle, such as required by § 238.103(c), in which safety determinations are influenced by the particular circumstances of the railroad's operating environment. In any event, the fact that fire or smoke, or both, may ultimately pass through a penetration into the passenger compartment in an actual incident would not, in itself, indicate noncompliance with this requirement. Bay State added in its petition that the rule should prohibit smoke penetration into the passenger compartment through passages in all walls and floors that separate passengers from major sources of ignition, combustion, or fuel. FRA makes clear that Notes 15 and 17 (formerly Note 21 of the final rule, discussed below) require that penetrations in portions of the vehicle body such as roofs and walls be designed against acting as passageways for fire and smoke.

Further, in their petitions for reconsideration addressing Note 20 of the final rule (now Note 16) Bay State and LTK stated that the nominal fire endurance test period specified for structural flooring assemblies should be 30 minutes instead of 15 minutes, especially for vehicles operating in tunnels or on elevated structures, to protect passengers from under-car fires. In particular, LTK stated that a 30-minute fire endurance period for flooring is typical and achievable by car builders without hardship, even noting that a one-hour floor fire endurance period is not uncommon. LTK believed that under a worst-case scenario 30 minutes can easily be expended in stopping a rail car, shutting down power so that emergency personnel can safely approach the car once they arrive, and evacuating passengers safely from the car. Bay State questioned the manner in which the ASTM E 119 floor structure test is conducted, noting in particular that cinder blocks used during testing could act as heat sinks and lead to false temperature readings. The petitioner also stated that ''passing'' temperatures for the test are too high to afford any meaningful thermal protection for passengers.

FRA makes clear that the 15-minute nominal test period specified for floor fire endurance is not a safety minimum under all circumstances. Each railroad must determine an appropriate fire endurance test period based on its operating environment—and that period may be greater than 15 minutes. Note 16 requires that the floor endurance test period be at least twice the maximum expected time to stop the train from its maximum operating speed, plus the time to safely evacuate all passengers from the vehicle under normal conditions. Note 16 also specifies that this floor endurance test period must be consistent with the safe evacuation of a full load of passengers from the vehicle under worst-case conditions. FRA notes that guidance for determining an appropriate floor endurance test period is included in a study by the Volpe Center of Bay Area Rapid Transit District (BART) ''C'' rail transit car fire safety characteristics. (*See* in particular Appendix B of ''Review of Bart ''C'' Car Fire Safety Characteristics,'' UMTA–MA–06–0178–87–1, DOT–TSC–UMTA–87–5, September 1987. FRA has placed a copy of this report in the public docket for this rulemaking.) The necessary endurance time could vary depending on factors such as the time needed to evaluate the situation and make a decision to evacuate, the time needed to announce the evacuation, rail car capacity and number of door exits, and whether the train is located at a station platform or in a tunnel. The nominal 15-minute test period specified in Note 16 is the same as that in Note 6 of the 1989 FRA guidelines and proposed in the NPRM, and FRA did not intend to change it in Phase I of the rulemaking. However, in Phase II FRA intends to examine in particular what floor fire endurance test periods are being specified by car builders and railroads, for purposes of deciding whether to modify the nominal test period.

In administering the final rule, an issue arose as to whether former Note 20, now Note 16, applied to more than the floor structure that separates a vehicle's interior from its undercarriage. Specifically, FRA was asked whether this Note applied to the floor structure separating the passenger compartment in the second level of a bi-level passenger car from the passenger compartment in the first level below. FRA did not intend that this Note apply to such an intermediate floor structure; rather, FRA intended that the fire safety of such a floor structure be addressed in former Note 21 of the final rule, now Note 17. FRA has amended the rule accordingly to make this clear. In accordance with Note 17, railroads must consider the fire safety characteristics of the floor structure separating the levels of a bi-level passenger car, for example, to address the risk that a fire may spread from one level of the car to another as well as address the hazard posed by the availability of materials to fuel a fire. Note 17 also addresses the fire endurance of other rail car elements that separate major ignition sources, energy sources, or sources of fuel-load from vehicle interiors. Examples of these elements include extensive HVAC or

power-conditioning equipment installed on roofs, or electrical equipment lockers which may become involved in fires resulting from mechanical failures or electrical insulation breakdown.

Finally, in its petition for reconsideration, LTK raised the concern that former Note 21 of the final rule, now Note 17, indicated that ''Other'' portions of a vehicle were required to be tested using the ASTM E 119 test method, while the Note alluded to a fire hazard analysis with no minimum test period. Bay State added that standard practice is to use the ASTM E 119 test method on other structural components with the proviso that walls and roofs be tested in their mode of use. Bay State also stated that this Note should address the penetration of smoke into passenger compartments, maintaining that for vehicles operating in tunnels and on elevated structures no smoke penetration should be observed during testing.

FRA makes clear that the rule does not require the ASTM E 119 test method to be applied to ''Other'' structural components of a vehicle in testing the fire endurance of such components, and FRA has amended the rule accordingly. Nor does the rule specify a minimum test performance period for purposes of demonstrating fire endurance. The appropriate test method and performance criteria vary depending on the fire hazard posed and shall be determined by the railroad through a fire hazard analysis in accordance with Note 17. The penetration of smoke into passenger compartments is addressed in both this Note and Note 15, discussed earlier.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This action has been evaluated in accordance with Executive Order 12866 and DOT policies and procedures. Although the final rule met the criteria for being considered a significant rule under these policies and procedures, the amendments contained in this action are not considered significant in the same way because they generally clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule. These amendments and clarifications will, overall, reduce the cost of complying with the rule. However, this cost reduction has not specifically been calculated. FRA believes that these amendments and clarifications will have a minimal net effect on FRA's original analysis of the costs and benefits associated with the final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this action does not have a significant impact on a substantial number of small entities. Because the amendments contained in this document generally clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, FRA has concluded that there are no substantial economic impacts on small units of government, businesses, or other organizations resulting from this action.

Paperwork Reduction Act

This action does not change the information collection requirements contained in the original final rule.

Environmental Impact

FRA has evaluated this action in accordance with its ''Procedures for Considering Environmental Impacts'' (64 FR 28545; May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this action is not a major FRA action requiring the preparation of an environmental impact statement or environmental assessment because it is categorically excluded from detailed environmental review pursuant to section 4(c) of FRA's Procedures.

Federalism Implications

Executive Order 13132 provides in part that, to the extent practicable, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. *See* 64 FR 43255; Aug. 10, 1999. FRA believes that this regulatory action will not have federalism implications that impose substantial direct compliance costs on State and local governments, and that this action is in compliance with Executive Order 13132. The amendments contained in this document generally clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule.

FRA does note that States involved in the State Participation Program, pursuant to 49 CFR part 212, may incur minimal costs associated with the training of their inspectors involved in the enforcement of the rule. Nonetheless, representatives of States were consulted in the development of the rule, in particular through the participation of the American Association of State Highway and Transportation Officials in the Passenger Equipment Safety Standards Working Group. *See* 64 FR 25541. FRA also considered and addressed comments on the rulemaking from the New York Department of Transportation, North Carolina Department of Transportation, Washington State Department of Transportation, and the State of Vermont Agency of Transportation.

In any event, Federal preemption of a State or local law occurs automatically as a result of the statutory provision contained at 49 U.S.C. 20106 when FRA issues a regulation covering the same subject matter as a State or local law unless the State or local law is designed to reduce an essentially local safety hazard, is not incompatible with Federal law, and does not place an unreasonable burden on interstate commerce. *See* 49 CFR 238.13. It should be noted that the potential for preemption also exists under various other statutory and constitutional provisions, including the Locomotive Inspection Act (now codified at 49 U.S.C. 20701–20703) and the Commerce Clause of the United States Constitution.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355; May 22, 2001. Under the Executive Order a ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this response to petitions for reconsideration of the final rule in accordance with Executive Order 13211, and has determined that this regulatory action is not a ''significant energy action'' within the meaning of the Executive Order.

Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Sec. 201. Section 202 of the Act further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *'' detailing the effect on State, local and tribal governments and the private sector. This action will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement was not required.

List of Subjects in 49 CFR Part 238

Fire prevention, Incorporation by reference, Passenger equipment, Penalties, Railroad Safety, Reporting and recordkeeping requirements.

The Rule

In consideration of the foregoing, chapter II, subtitle B of title 49, Code of Federal Regulations is amended as follows:

PART 238—[AMENDED]

1. The authority citation for part 238 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

Subpart B—Safety Planning and General Requirements

2. Section 238.103 is amended by adding paragraph (a)(3), revising the heading and introductory text of paragraph (c), revising paragraphs (c)(1), (2), (7), (8), and (9), revising the heading of paragraph (d), and revising paragraphs (d)(1), (2)(i), (3)(i), (4) and (5) to read as follows:

§ 238.103 Fire safety.

(a) * * *

(3) For purposes of complying with the requirements of this paragraph, a railroad may rely on the results of tests of material conducted in accordance with the standards and performance criteria for flammabilitiy and smoke emission characteristics as specified in Appendix B to this part in effect on July 12, 1999 (*see* 49 CFR parts 200–399, revised as of October 1, 1999), if prior to June 25, 2002 the material is—

(i) Installed in a passenger car or locomotive;

(ii) Held in inventory by the railroad; or

(iii) Ordered by the railroad.

(c) *Fire safety analysis for procuring new passenger cars and locomotives.* In procuring new passenger cars and locomotives, each railroad shall ensure that fire safety considerations and features in the design of this equipment reduce the risk of personal injury caused by fire to an acceptable level in its operating environment using a formal safety methodology such as MIL–STD–882. To this end, each railroad shall complete a written fire safety analysis for the passenger equipment being procured. In conducting the analysis, the railroad shall—

(1) Identify, analyze, and prioritize the fire hazards inherent in the design of the equipment.

(2) Take effective steps to design the equipment and select materials which help provide sufficient fire resistance to reasonably ensure adequate time to detect a fire and safely evacuate the passengers and crewmembers, if a fire cannot be prevented. Factors to consider include potential ignition sources; the type, quantity, and location of the materials; and availability of rapid and safe egress to the exterior of the equipment under conditions secure from fire, smoke, and other hazards.

* * * * *

(7) On a case-by-case basis, analyze the benefit provided by including a fixed, automatic fire-suppression system in any unoccupied train compartment that contains equipment or material that poses a fire hazard, and determine the proper type and size of the automatic fire-suppression system for each such location. A fixed, automatic fire-suppression system shall be installed in any unoccupied compartment when the analysis determines that such equipment is practical and necessary to ensure sufficient time for the safe evacuation of passengers and crewmembers from the train.

(8) Explain how safety issues are resolved in the design of the equipment and selection of materials to reduce the risk of each fire hazard.

(9) Describe the analysis and testing necessary to demonstrate that the fire protection approach taken in the design of the equipment and selection of materials meets the fire protection requirements of this part.

(d) *Fire safety analysis for existing passenger cars and locomotives.* (1) Not later than January 10, 2001, each passenger railroad shall complete a preliminary fire safety analysis for each category of existing passenger cars and locomotives and rail service.

(2) Not later than July 10, 2001 each such railroad shall—

(i) Complete a final fire safety analysis for any category of existing passenger cars and locomotives and rail service evaluated during the preliminary fire safety analysis as likely presenting an unacceptable risk of personal injury. In conducting the analysis, the railroad shall consider the extent to which materials comply with the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B to this part or alternative standards approved by FRA under this part.

* * * * *

(3) Not later than July 10, 2003, each such railroad shall—

(i) Complete a final fire safety analysis for all categories of existing passenger cars and locomotives and rail service. In completing this analysis, the railroad shall, as far as practicable, determine the extent to which remaining materials comply with the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B to this part or alternative standards approved by FRA under this part.

* * * * *

(4) Where possible prior to transferring existing passenger cars and locomotives to a new category of rail service, but in no case more than 90 days following such a transfer, the passenger railroad shall complete a new fire safety analysis taking into consideration the change in railroad operations and shall effect prompt action to reduce any identified risk to an acceptable level.

(5) As used in this paragraph, a ''category of existing passenger cars and locomotives and rail service'' shall be determined by the railroad based on relevant fire safety risks, including available ignition sources, presence or absence of heat/smoke detection systems, known variations from the required material test performance criteria or alternative standards approved by FRA, and availability of rapid and safe egress to the exterior of

the vehicle under conditions secure from fire, smoke, and other hazards.

* * * * *

3. Appendix B to part 238 is revised to read as follows:

Appendix B to Part 238—Test Methods and Performance Criteria for the Flammability and Smoke Emission Characteristics of Materials Used in Passenger Cars and Locomotive Cabs

This appendix contains the test methods and performance criteria for the flammability and smoke emission characteristics of materials used in passenger cars and locomotive cabs, in accordance with the requirements of § 238.103.

(a) *Incorporation by reference.*

Certain documents are incorporated by reference into this appendix with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy of each document during normal business hours at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Ave., N.W., Suite 7000 or at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C. The documents incorporated by reference into this appendix and the sources from which you may obtain these documents are listed below:

(1) American Society for Testing and Materials (ASTM), 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959.

(i) ASTM C 1166–00, Standard Test Method for Flame Propagation of Dense and Cellular Elastomeric Gaskets and Accessories.

(ii) ASTM D 2724–87, Standard Test Methods for Bonded, Fused, and Laminated Apparel Fabrics.

(iii) ASTM D 3574–95, Standard Test Methods for Flexible Cellular Materials-Slab, Bonded, and Molded Urethane Foams.

(iv) ASTM D 3675–98, Standard Test Method for Surface Flammability of Flexible Cellular Materials Using a Radiant Heat Energy Source.

(v) ASTM E 119–00a, Standard Test Methods for Fire Tests of Building Construction and Materials.

(vi) ASTM E 162–98, Standard Test Method for Surface Flammability of Materials Using a Radiant Heat Energy Source.

(vii) ASTM E 648–00, Standard Test Method for Critical Radiant Flux of Floor-Covering Systems Using a Radiant Heat Energy Source.

(viii) ASTM E 662–01, Standard Test Method for Specific Optical Density of Smoke Generated by Solid Materials.

(ix) ASTM E 1354–99, Standard Test Method for Heat and Visible Smoke Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter.

(x) ASTM E 1537–99, Standard Test Method for Fire Testing of Upholstered Furniture.

(xi) ASTM E 1590–01, Standard Test Method for Fire Testing of Mattresses.

(2) General Services Administration, Federal Supply Service, Specification Section, 470 E. L'Enfant Plaza, S.W., Suite 8100, Washington, D.C., 20407. FED–STD–191A–Textile Test Method 5830, Leaching Resistance of Cloth; Standard Method (July 20, 1978).

(3) State of California, Department of Consumer Affairs, Bureau of Home Furnishings and Thermal Insulation, 3485 Orange Grove Avenue, North Highlands, CA 95660–5595.

(i) California Technical Bulletin (Cal TB) 129, Flammability Test Procedure for Mattresses for Use in Public Buildings (October, 1992).

(ii) Cal TB 133, Flammability Test Procedure for Seating Furniture for Use in Public Occupancies (January, 1991).

(b) *Definitions.* As used in this appendix—

Average heat release rate ($\dot{q}''_{180}$) means, as defined in ASTM E 1354–99, the average heat release rate per unit area in the time period beginning at the time of ignition and ending 180 seconds later.

Critical radiant flux (C.R.F.) means, as defined in ASTM E 648–00, a measure of the behavior of horizontally-mounted floor covering systems exposed to a flaming ignition source in a graded radiant heat energy environment in a test chamber.

Flame spread index (I_s) means, as defined in ASTM E 162–98, a factor derived from the rate of progress of the flame front (F_s) and the rate of heat liberation by the material under test (Q), such that $I_s = F_s \times Q$.

Flaming dripping means periodic dripping of flaming material from the site of material burning or material installation.

Flaming running means continuous flaming material leaving the site of material burning or material installation.

Heat release rate means, as defined in ASTM E 1354–99, the heat evolved from a specimen per unit of time.

Specific extinction area (σ_f) means, as defined in ASTM E 1354–99, specific extinction area for smoke.

Specific optical density (D_s) means, as defined in ASTM E 662–01, the optical density measured over unit path length within a chamber of unit volume, produced from a specimen of unit surface area, that is irradiated by a heat flux of 2.5 watts/cm^2 for a specified period of time.

Surface flammability means the rate at which flames will travel along surfaces.

(c) *Required test methods and performance criteria.* The materials used in locomotive cabs and passenger cars shall be tested according to the methods and meet the performance criteria set forth in the following table and notes:

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Test Procedures and Performance Criteria for the Flammability and Smoke Emission Characteristics of Materials Used in Passenger Cars and Locomotive Cabs

CATEGORY	FUNCTION OF MATERIAL	TEST METHOD	PERFORMANCE CRITERIA
Cushions, Mattresses	All [1, 2, 3, 4, 5, 6, 7, 8]	ASTM D 3675-98	$I_s \leq 25$
		ASTM E 662-01	$D_s(1.5) \leq 100$ $D_s(4.0) \leq 175$
Fabrics	Seat upholstery, mattress ticking and covers, curtains, draperies, wall coverings, and window shades [1, 2, 3, 6, 7, 8]	14 CFR 25, Appendix F, Part I, (vertical test)	Flame time $\leq$ 10 seconds Burn length $\leq$ 6 inches
		ASTM E 662-01	$D_s(4.0) \leq 200$
Other Vehicle Components [9, 10, 11, 12]	Seat and mattress frames, wall and ceiling panels, seat and toilet shrouds, tray and other tables, partitions, shelves, opaque windscreens, end caps, roof housings, and component boxes and covers [1, 2]	ASTM E 162-98	$I_s \leq 35$
		ASTM E 662-01	$D_s(1.5) \leq 100$ $D_s(4.0) \leq 200$
	Flexible cellular foams used in armrests and seat padding [1, 2, 4, 6]	ASTM D 3675-98	$I_s \leq 25$
		ASTM E 662-01	$D_s(1.5) \leq 100$ $D_s(4.0) \leq 175$
	Thermal and acoustic insulation [1, 2]	ASTM E 162-98	$I_s \leq 25$
		ASTM E 662-01	$D_s(4.0) \leq 100$
	HVAC ducting [1, 2]	ASTM E 162-98	$I_s \leq 35$
		ASTM E 662-01	$D_s(4.0) \leq 100$
	Floor covering [12,13]	ASTM E 648-00	C.R.F. $\geq$ 5 kW/m^2
		ASTM E 662-01	$D_s(1.5) \leq 100$ $D_s(4.0) \leq 200$
	Light diffusers, windows and transparent plastic windscreens [2, 14]	ASTM E 162-98	$I_s \leq 100$
		ASTM E 662-01	$D_s(1.5) \leq 100$ $D_s(4.0) \leq 200$
Elastomers [1, 10, 11]	Window gaskets, door nosings, inter-car diaphragms, roof mats, and seat springs	ASTM C 1166-00	Average flame propagation $\leq$ 4 inches
		ASTM E 662-01	$D_s(1.5) \leq 100$ $D_s(4.0) \leq 200$
Structural Components [15]	Flooring [16], Other [17]	ASTM E 119-00a	Pass

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[1] Materials tested for surface flammability shall not exhibit any flaming running or dripping.

[2] The ASTM E 662–01 maximum test limits for smoke emission (specific optical density) shall be measured in either the flaming or non-flaming mode, utilizing the mode which generates the most smoke.

[3] Testing of a complete seat assembly (including cushions, fabric layers, upholstery) according to ASTM E 1537–99 using the pass/fail criteria of Cal TB 133, and testing of a complete mattress assembly (including foam and ticking) according to ASTM E 1590–01 using the pass/fail criteria of Cal TB 129 shall be permitted in lieu of the test methods prescribed herein, provided the assembly component units remain unchanged or new (replacement) assembly components possess equivalent fire performance properties to the original components tested. A fire hazard analysis must also be conducted that considers the operating environment within which the seat or mattress assembly will be used in relation to the risk of vandalism, puncture, cutting, or other acts which may expose the individual components of the assemblies to an ignition source. Notes 5, 6, 7, and 8 apply.

[4] Testing is performed without upholstery.

[5] The surface flammability and smoke emission characteristics shall be demonstrated to be permanent after dynamic testing according to ASTM D 3574–95, Test I_2 (Dynamic Fatigue Test by the Roller Shear at Constant Force) or Test I_3 (Dynamic Fatigue Test by Constant Force Pounding) both using Procedure B, except that the test samples shall be a minimum of 6 inches (154 mm) by 18 inches (457 mm) by the thickness of the material in its end use configuration, or multiples thereof. If Test I_3 is used, the size of the indentor described in paragraph 96.2 shall be modified to accommodate the specified test specimen.

[6] The surface flammability and smoke emission characteristics shall be demonstrated to be permanent by washing, if appropriate, according to FED-STD–191A Textile Test Method 5830.

[7] The surface flammability and smoke emission characteristics shall be demonstrated to be permanent by dry-cleaning, if appropriate, according to ASTM D 2724–87.

[8] Materials that cannot be washed or dry-cleaned shall be so labeled and shall meet the applicable performance criteria after being cleaned as recommended by the manufacturer.

[9] Signage is not required to meet any flammability or smoke emission performance criteria specified in this Appendix.

[10] Materials used to fabricate miscellaneous, discontinuous small parts (such as knobs, rollers, fasteners, clips, grommets, and small electrical parts) that will not contribute materially to fire growth in end use configuration are exempt from flammability and smoke emission performance requirements, provided that the surface area of any individual small part is less than 16 square inches (100 cm^2) in end use configuration and an appropriate fire hazard analysis is conducted which addresses the location and quantity of the materials used, and the vulnerability of the materials to ignition and contribution to flame spread.

[11] If the surface area of any individual small part is less than 16 square inches (100 cm^2) in end use configuration, materials used to fabricate such a part may be tested in accordance with ASTM E 1354–99 as an alternative to both (a) the ASTM E 162–98 flammability test procedure, or the appropriate flammability test procedure otherwise specified in the table, and (b) the ASTM E 662–01 smoke generation test procedure. Testing shall be at 50 kW/m^2 applied heat flux with a retainer frame. Materials tested in accordance with ASTM E 1354–99 shall meet the following performance criteria: average heat release rate ($\dot{q}''_{180}$) less than or equal to 100 kW/m^2, and average specific extinction area (σ_f) less than or equal to 500 m^2/kg over the same 180-second period.

[12] Carpeting used as a wall or ceiling covering shall be tested according to ASTM E 162–98 and ASTM E 662–01 and meet the respective criteria of I_s less than or equal to 35 and D_s (1.5) less than or equal to 100 and D_s (4.0) less than or equal to 200. Notes 1 and 2 apply.

[13] Floor covering shall be tested with padding in accordance with ASTM E 648–00, if the padding is used in the actual installation.

[14] For double window glazing, only the interior glazing is required to meet the requirements specified herein. (The exterior glazing is not required to meet these requirements.)

[15] Penetrations (ducts, etc.) shall be designed against acting as passageways for fire and smoke and representative penetrations shall be included as part of test assemblies.

[16] A structural flooring assembly separating the interior of a vehicle from its undercarriage shall meet the performance criteria during a nominal test period as determined by the railroad. The nominal test period must be twice the maximum expected time period under normal circumstances for a vehicle to stop completely and safely from its maximum operating speed, plus the time necessary to evacuate all the vehicle's occupants to a safe area. The nominal test period must not be less than 15 minutes. Only one specimen need be tested. A proportional reduction may be made in the dimensions of the specimen provided it serves to truly test the ability of the structural flooring assembly to perform as a barrier against under-vehicle fires. The fire resistance period required shall be consistent with the safe evacuation of a full load of passengers from the vehicle under worst-case conditions.

[17] Portions of the vehicle body which separate major ignition sources, energy sources, or sources of fuel-load from vehicle interiors, shall have sufficient fire endurance as determined by a fire hazard analysis acceptable to the railroad which addresses the location and quantity of the materials used, as well as vulnerability of the materials to ignition, flame spread, and smoke generation. These portions include equipment carrying portions of a vehicle's roof and the interior structure separating the levels of a bi-level car, but do not include a flooring assembly subject to Note 16. A railroad is not required to use the ASTM E 119–00a test method.

Issued in Washington, DC on June 17, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–15639 Filed 6–24–02; 8:45 am]

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Federal Register

Tuesday,
June 25, 2002

Part IV

Securities and Exchange Commission

17 CFR Parts 228, et al.
Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 240 and 249

[Release Nos. 33–8106; 34–46084; File No. S7–22–02]

RIN 3235–AI47

Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We propose to add 11 new items that would require a company to file Form 8–K under the Securities Exchange Act of 1934. In addition, we propose to move two disclosure items currently required to be included in companies' annual and quarterly reports to Form 8–K and to amend several of the existing Form 8–K disclosure items. We also propose to shorten the filing deadline for Form 8–K to two business days after an event triggering the form's disclosure requirements. Currently, the filing deadline is five business days or 15 calendar days after the triggering event, depending on the nature of the event. Finally, we propose to create a new safe harbor for certain violations of the Form 8–K filing requirements and to grant an automatic two business day extension of the filing deadline to companies providing proper notice on Form 12b–25 of an inability to timely file a particular Form 8–K. We propose these amendments to provide investors with better and faster disclosure of important corporate events.

DATES: Comments should be received on or before August 26, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–22–02; this file number should be included in the subject line if e-mail is used. Comment letters will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters will be posted on the Commission's Internet Web Site (*http://www.sec.gov*). We do not edit personal information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Ray Be, Special Counsel, or N. Sean Harrison, Special Counsel, at (202) 942–2910, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Form 8–K,[1] Form 10–K,[2] Form 10–KSB,[3] Form 10–Q,[4] Form 10–QSB,[5] Rule 13a–11,[6] Rule 15d–10,[7] Rule 15d–11,[8] Rule 12b–25[9] and Form 12b–25[10] under the Securities Exchange Act of 1934,[11] Item 10,[12] Item 601[13] and Item 701[14] of Regulation S–B[15] and Item 10,[16] Item 601[17] and Item 701[18] of Regulation S–K.[19]

I. Background

The Exchange Act established a system of continuing disclosure about companies choosing to issue securities to the public. Congress recognized that the ongoing dissemination of accurate information by companies about themselves and their securities is essential to effective operation of the trading markets. The Exchange Act rules require public companies to make periodic disclosures at annual and quarterly intervals, with other important information reported on a more current basis. The Exchange Act specifically provides for current disclosure to maintain the currency and adequacy of information disclosed by companies.[20]

The Commission created Form 8–K in 1936 as the form to be used by companies to file ''current'' reports when specific extraordinary corporate events occur.[21] As originally adopted, companies could file Form 8–K as late as 10 days after the end of the month in which an event requiring disclosure occurred. This meant that a company did not have to report a Form 8–K event occurring on the first day of a month until 40 days later. By today's standards, it would be very difficult to describe reports with such a delayed filing deadline as ''current'' reports.[22]

Since 1936, there have been several substantive changes to Form 8–K. In 1977, we made significant amendments to create the general structure of the form that exists today, including the filing deadlines that require reporting of some corporate events within five business days after their occurrence and others within 15 calendar days after their occurrence.[23] In the intervening years, we have amended Form 8–K at various times to add or delete items. Form 8–K currently consists of nine disclosure items.[24] Six of the items describe specific events that require companies to file Form 8–K. Those events are:

- A change in control of the company;[25]
- The company's acquisition or disposition of a significant amount of assets;[26]
- The company's bankruptcy or receivership;[27]
- A change in the company's certifying accountant;[28]
- The resignation of a company director;[29] and
- A change in the company's fiscal year.[30]

A seventh item requires companies to furnish exhibits and to list any financial statements and pro forma financial information included as part of Form 8–K in connection with a business acquisition.[31] Another item permits companies, at their option, to disclose events that they deem to be of importance to their shareholders.[32] The

[1] 17 CFR 249.308.
[2] 17 CFR 249.310.
[3] 17 CFR 249.310a.
[4] 17 CFR 249.308a.
[5] 17 CFR 249.308b.
[6] 17 CFR 240.13a–11.
[7] 17 CFR 240.15d–10.
[8] 17 CFR 240.15d–11.
[9] 17 CFR 240.12b–25.
[10] 17 CFR 249.322.
[11] 15 U.S.C. 78a *et seq.*
[12] 17 CFR 228.10.
[13] 17 CFR 228.601.
[14] 17 CFR 228.701.
[15] 17 CFR 228.10 *et seq.*
[16] 17 CFR 229.10 *et seq.*
[17] 17 CFR 229.601.
[18] 17 CFR 229.701.
[19] 17 CFR 229.
[20] 15 U.S.C. 78m(a).
[21] Release No. 34–925 (Nov. 11, 1936).
[22] See Release No. 34–8683 (Sept. 15, 1969) [35 FR 18512]. In that release, we noted that prompt reporting of an event within a few days of its occurrence appeared to be difficult to administer and unduly burdensome. This was in large part attributable to the state of technology at the time.
[23] Release No. 34–13156 (Jan. 13, 1977) [42 FR 4424]. Item 7 of Form 8–K states that financial statements required to be included on Form 8–K when a company acquires a business may be filed with the initial report or by amendment not later than 60 days after the date that the initial Form 8–K to report the acquisition must be filed. See Item 7(a)(3) of Form 8–K.
[24] On April 12, 2002, we proposed adding a tenth item to Form 8–K that would require prompt disclosure by a company on Form 8–K of transactions by its officers and directors in the company's securities (Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914]).
[25] Current Item 1 of Form 8–K.
[26] Current Item 2 of Form 8–K.
[27] Current Item 3 of Form 8–K.
[28] Current Item 4 of Form 8–K.
[29] Current Item 6 of Form 8–K.
[30] Current Item 8 of Form 8–K.
[31] Current Item 7 of Form 8–K.
[32] Current Item 5 of Form 8–K.

ninth item permits companies to use Form 8–K as a non-exclusive method to satisfy their public disclosure requirements under Regulation FD.[33]

In 1998, we published proposals to expand Form 8–K disclosure and shorten the filing date in a package of proposed revisions intended to effect comprehensive reform of the Securities Act offering system.[34] Specifically, we proposed to add six disclosure items to Form 8–K[35] and to shorten the Form 8–K filing deadline to five calendar days for some items and one business day for other items.[36]

Comments on the substantive and timing changes to Form 8–K that we proposed in 1998 varied greatly and no consensus was reached as to the advisability of the changes.[37] We did not adopt these proposals. As described more fully below, we are re-proposing the addition to Form 8–K of four of the six items regarding which we previously solicited public comment,[38] along with several new proposed disclosure items. We also again propose to shorten the Form 8–K filing deadline, but in a different manner than proposed in 1998.

The last few decades have been marked by significant advancements in communications technologies, including the Internet. Such technologies provide investors and securities markets with instantaneous access to a wide array of investment information with varying degrees of reliability. As a result, investors and the securities markets today demand and expect more ''real-time'' access to a greater range of reliable information concerning important corporate events that affect publicly traded securities. Although no disclosure regime can eliminate all fraud in the securities markets, more prompt disclosure by companies of significant events should reduce the opportunities for deception and manipulation that stem from delayed disclosure. Accordingly, we propose to expand the list of events that trigger a public company's obligation to file a current report on Form 8–K under the Exchange Act. We have identified the following extraordinary events as specific disclosure items because we believe such events are presumptively of such importance to investors that prompt disclosure is necessary.[39] In addition, we encourage companies to continue to use Form 8–K[40] to disclose any other information that may be material or otherwise of importance to investors.

We also propose to accelerate the Form 8–K filing deadline by requiring companies to file Form 8–K within two business days after the occurrence of a triggering event.[41] In 1977, when we established the five business day and 15 calendar day deadlines, we had to consider potential problems associated with the delivery and filing of Form 8–K in paper, such as delays in the U.S. mail. For the past several years, the EDGAR electronic filing system has enabled domestic public companies to file their documents with the Commission from anywhere in the world within significantly shortened timeframes. These documents are now available to the public through EDGAR on a real-time basis.[42]

In establishing the appropriate timeframe for filing Form 8–K, we must balance investors' need for timely access to information about the companies in which they have invested or as to which they are making investment decisions with the time needed by companies to prepare accurate and complete information. In light of advances in technology that make it possible for companies to capture, analyze and broadly disseminate information much more quickly than in 1977 and greater investor demand for timely information, we believe that the proposed changes are consistent with the statutory intent reflected in Section 13(a) of the Exchange Act ''to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12.'' [43] These changes are part of the Commission's initiative to improve the delivery of timely, high-quality information to the securities markets to ensure that securities are traded on the basis of current information.[44]

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[33] Current Item 9 of Form 8–K. We adopted Regulation FD in 2000. See Release No. 33–7881 (Aug. 10, 2000) [65 FR 51716]. Regulation FD requires a company that discloses material nonpublic information to securities industry professionals, institutions or other persons who may buy or sell securities of the issuer on the basis of that information, to publicly disclose the information. A company choosing to publicly disclose the information on Form 8–K can elect either to furnish the information pursuant to Item 9, which is specifically designated for Regulation FD disclosure, or to file the information under Item 5, the general voluntary Form 8–K disclosure item. If an issuer elects to furnish the information under Item 9, that information is not considered filed under the Exchange Act. Alternatively, a company may comply with Regulation FD by disclosing the information through another method or combination of methods that is reasonably designed to effect broad, non-exclusionary distribution of the information to the public.

[34] Release No. 33–7606A (December 4, 1998) [63 FR 67174].

[35] The proposed disclosure items included the following: (1) Timely disclosure of annual and quarterly earnings results of domestic companies; (2) material modifications to the rights of security holders; (3) departure of a chief executive officer, president, chief financial officer or chief operating officer; (4) material defaults on senior securities; (5) notice from an auditor that the company no longer may rely on a prior audit report; and (6) corporate name changes.

[36] We proposed a one business day deadline for reports concerning: (1) a material default on a senior security; (2) a notice that a company's independent accountant has resigned, declined to stand for reelection or been replaced; and (3) the resignation of a director. We proposed a five calendar day deadline for all other Form 8–K items.

[37] With respect to the proposed changes in filing deadlines, a number of commenters, including several issuers and law firms indicated that, at least for some of the items, filing in two business days may be workable. See, for example, letters in File No. S7–30–98 from the Financial Executives Institute and the Association of the Bar of the City of New York.

[38] The four disclosure items that we are re-proposing are: (1) Material modifications to the rights of security holders; (2) departure of a chief executive officer, president, chief financial officer, or chief operating officer (the item that we re-propose also includes the departure of a company's chief accounting officer and the departure of any person serving an equivalent function as any officer included in the listing); (3) material defaults on senior securities; and (4) withdrawal of, or notice of non-reliance on, a previously issued audit report. Although we are not re-proposing a disclosure item for material defaults on senior securities, such a requirement is subsumed by our proposed new item that would require disclosure of any event triggering a direct or contingent financial obligation that is material to the company. We are not re-proposing the item that would require timely disclosure of domestic companies' annual and quarterly earnings results. We also are not re-proposing a specific disclosure item regarding corporate name changes because we believe that a proposed new item that would require disclosure about changes to a company's articles of incorporation or bylaws generally would cover changes made to authorize a new corporate name.

[39] In identifying these events, we have considered the relative importance of different types of corporate events to investors. Specifically, we have considered various factors to gauge, among other things, the extent to which we believe investors would consider the event important in making an investment or voting decision, the frequency of occurrence of the event, the likely market reaction to the event, and the potential impact of the event on a company's operations and financial statements.

[40] Specifically, we encourage companies to file voluntary reports on Form 8–K pursuant to current Item 5, which we propose to renumber as Item 7.01 in this release.

[41] The proposed deadline change would not affect the timing requirements for Form 8–K disclosure made to satisfy the requirements under Regulation FD and also would not affect the timing requirement in Item 7(a)(3) of Form 8–K regarding the filing of financial statements when a company acquires a business. Form 8–K currently does not, and would not under the proposals, specify a deadline for companies' voluntary disclosure of events on the form. Finally, the proposed deadline changes would not affect the deadlines proposed by Release No. 33–8090 for reports disclosing transactions by a company's officers and directors in that company's securities.

[42] See Press Release No. 2002–75, dated May 30, 2002, available at our website at *http://www.sec.gov*.

[43] 15 U.S.C. 13(a).

[44] This release is the fourth in a series of initiatives designed to significantly improve the timeliness and quality of disclosures by companies to the public. In April, we issued two proposing

Continued

II. Discussion of Proposed Changes

A. Proposed Form 8–K Changes

We propose to add 11 new items to the list of events that require a company to file a current report on Form 8–K.[45] In addition, we propose to make significant changes to existing Form 8–K items and to move two items from other Exchange Act reports to Form 8–K. Through our extensive experience with, and reviews of, filings,[46] as well as comment letters from the public, we believe that these items represent events that presumptively have, or can have, such significance that timely disclosure is necessary for the market to perform properly and efficiently. The following is a list of the new disclosure items that we propose to add to Form 8–K:

- Entry into a material agreement not made in the ordinary course of business;
- Termination of a material agreement not made in the ordinary course of business;
- Termination or reduction of a business relationship with a customer that constitutes a specified amount of the company's revenues;
- Creation of a direct or contingent financial obligation that is material to the company;
- Events triggering a direct or contingent financial obligation that is material to the company, including any default or acceleration of an obligation;[47]
- Exit activities including material write-offs and restructuring charges;
- Any material impairment;
- A change in a rating agency decision, issuance of a credit watch or change in a company outlook;
- Movement of the company's securities from one exchange or quotation system to another, delisting of the company's securities from an exchange or quotation system, or a notice that a company does not comply with a listing standard;
- Conclusion or notice that security holders no longer should rely on the company's previously issued financial statements or a related audit report; and
- Any material limitation, restriction or prohibition, including the beginning and end of lock-out periods, regarding the company's employee benefit, retirement and stock ownership plans.

We also propose to move the following two items from other Exchange Act reports to Form 8–K:

- Unregistered sales of equity securities by the company;[48] and
- Material modifications to rights of holders of the company's securities.[49]

Finally, we propose to expand the current Form 8–K item that requires disclosure about the resignation of a director[50] to also require disclosure regarding the departure of a director for reasons other than a disagreement or removal for cause, the appointment or departure of a principal officer, and the election of new directors. We also would combine the current Form 8–K item regarding a change in a company's fiscal year with a new requirement to disclose any material amendment to a company's articles of incorporation or bylaws.

The substantive requirements included in two of the proposed disclosure items, Material Modifications to Rights of Security Holders and certain aspects of Events Triggering a Direct or Contingent Financial Obligation That Is Material to the Registrant, formerly had been included in Form 8–K.[51] In 1977, we moved those items into Form 10–Q.[52] In light of the importance of such information to investors, we believe that it is appropriate to move these items back into Form 8–K.

We expect to make these amendments prospective only if we decide to adopt them. Therefore, if any of the proposed disclosure events occurs before effectiveness of any final rule, then no report would be required for that event. We further expect that, if we decide to adopt these proposals, we would make the new requirements effective 60 days after adoption. We solicit comment as to whether 60 days would provide sufficient time for transition to the new requirements. Should the period be shorter, *e.g.,* 30 days, or longer, *e.g.,* 90 days?

1. Discussion of Proposed Revisions to Form 8–K Disclosure Items

We propose to reorganize the Form 8–K disclosure items. We address the proposal to reorganize those items in more detail later in this release. This section of the release presents a discussion of the proposed changes to the Form 8–K items in the order that we expect them to appear if we adopt the proposals.

Section 1—Registrant's Business and Operations

Item 1.01 Entry Into a Material Agreement

We propose to add a new Form 8–K item that would require disclosure whenever a company enters into an agreement that is material to the company and that is not made in the ordinary course of the company's business. The company also would have to disclose any material amendment to a material agreement.[53] Under the proposed item, companies would have

releases. The first would shorten the filing deadline of large issuers' annual reports on Form 10–K or 10–KSB from 90 to 60 days and the filing deadline of their quarterly reports on Form 10–Q or 10–QSB from 45 to 30 days, as well as require these issuers to disclose whether they make their annual, quarterly and current reports available to investors on their websites (Release No. 33–8089 (Apr. 12, 2002) [67 FR 19896]). The second set of proposals would require prompt disclosure by a company on Form 8–K of transactions by its officers and directors in the company's securities (Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914]). In May, we issued a third release proposing disclosure regarding application of a company's critical accounting policies (Release No. 33–8098 (May 10, 2002) [67 FR 35620]).

[45] On February 13, 2002, we announced by press release our intention to consider several changes to our corporate disclosure rules as the first in a series of steps designed to improve the corporate disclosure and financial reporting system. One of the planned initiatives described in the press release was an expansion of the types of information that companies must report on Form 8–K. See Press Release 2002–22, dated Feb. 13, 2002, available at our website at *http://www.sec.gov*. The press release identified 15 disclosure items that we have evaluated for possible inclusion in Form 8–K reports. We already have proposed that a company report transactions by its executive officers and directors in the company's securities in Release No. 33–8090. We are deferring our consideration of a possible disclosure item about company waivers of corporate ethics and conduct rules until we have had the opportunity to fully review the changes proposed by the self-regulatory organizations to their corporate governance provisions. We also are deferring the possible addition of a new Form 8–K disclosure item regarding a material change in a company's accounting policy or estimate until we are able to evaluate public comment on our recently issued release that would require disclosure about a company's critical accounting policies. See Release No. 33–8098.

[46] In addition, in connection with this release, we reviewed the types of events currently being reported voluntarily on Form 8–K. Based on our review of over 200 voluntary Form 8–K filings, it appears that some companies already are voluntarily disclosing under Item 5 of Form 8–K many of the events that would be covered by the proposals and consider such information to be important to their investors.

[47] We concurrently propose to remove Item 3, Defaults Upon Senior Securities, from Part II of Forms 10–Q and 10–QSB. We believe that proposed Item 2.04 would subsume all events previously reported under this existing item.

[48] This event is currently reported under Item 2(c) of Part II of Forms 10–Q and 10–QSB and Item 5 of Part II of Forms 10–K and 10–KSB.

[49] This event is currently reported under Item 2(a) and (b) of Part II of Forms 10–Q and 10–QSB.

[50] Current Item 6 of Form 8–K.

[51] As stated elsewhere in this release, we expect that this proposed item would subsume the disclosure currently required by Item 3 of Form 10–Q, Defaults on Senior Securities.

[52] Release No. 34–13156 (Jan. 13, 1977) [42 FR 4424].

[53] An instruction to the proposed item would clarify that a company must disclose a material amendment to a material agreement even if the underlying agreement previously has not been disclosed because it was entered into prior to effectiveness of proposed Item 1.01, if it is adopted, and the company otherwise has not had to disclose it. In such a case, the company would have to file the underlying agreement, as well as the amendment to the agreement, as an exhibit to the report disclosing the amendment.

to disclose letters of intent and other non-binding agreements. Specifically, companies would have to file the agreement or letter as an exhibit to Form 8–K and disclose or provide the following information:

- The identity of the parties to the agreement and a description of any material relationship between any of the parties other than in respect of the agreement;
- A brief description of the agreement;
- The rights and obligations of each party to the agreement that are material to the company;
- Any material conditions to the agreement becoming binding or effective; and
- The duration of the agreement and any material termination provisions.

An instruction to the proposed item states that any material agreement not made in the ordinary course of the company's business must be disclosed under the proposed item. The proposed instruction also provides further guidance as to which agreements must be disclosed and filed under the item.[54] Another instruction to the proposed item states that a company must provide disclosure under the proposed item if the company succeeds as a party to the agreement by assumption or assignment.

We note that, although this proposed item would not require disclosure about agreements still under negotiation, there may be instances when a company is under some other duty to disclose contract negotiations.[55] We do not intend to change current law as to when disclosure about these negotiations is required. Therefore, this release does not address this issue.

We recognize that a company may need to report a given event under proposed Item 1.01 as well as other items, such as proposed Item 2.03. We note that General Instruction D to Form 8–K states that a company need only file one report listing all relevant item numbers. Therefore, the company could file a single Form 8–K and include the disclosure in a single place under the captions for both items.

Questions Regarding Proposed Item 1.01

- We seek comment as to whether the proposed disclosure only should be required with respect to definitive agreements which are unconditionally binding or binding subject only to conditions stated in the agreement.
- Should we require disclosure of letters of intent and other non-binding agreements? Would this cause any competitive harm or otherwise disrupt the ability of companies to negotiate agreements for the benefit of the company and its investors? Would this result in companies having to frequently file a Form 8–K? Are these types of non-binding agreements not yet ripe for disclosure? Should we limit or expand the proposed disclosures about material agreements in any way, and if so, how?
- Because we believe that agreements can be material for reasons other than the monetary amount involved, we propose to require disclosure under this item based on a ''materiality'' standard and do not propose to tie the disclosure to a financial measure. We seek comment as to whether we should instead use a threshold that is tied to a financial measure, either for all agreements subject to disclosure or for specified types of agreements subject to disclosure.
- We solicit additional comment as to whether companies should have to disclose all material agreements not made in the ordinary course of business as proposed. Are there some material agreements that companies should have to file even if Item 601(b)(10) would permit a material contract pertaining to the subject matter not to be filed as an exhibit? Should the proposed item exclude certain types of material agreements not made in the ordinary course of business pertaining to the same subject matter as material contracts that must be filed as exhibits under Item 601(b)(10)?
- Conversely, should companies have to disclose a material agreement that accompanies the ordinary course of the company's business if Item 601(b)(10) of Regulation S–K would deem it to not be made in the ordinary course of business and therefore would require the agreement to be filed as an exhibit? Are there additional types of agreements that accompany a company's ordinary business that are so significant that we should deem them not to be made in the ordinary course of business for purposes of the proposed item?
- Should we require companies to file the material agreements that are the subject of the Form 8–K disclosure as exhibits to the Form 8–K? Should we require companies to file letters of intent and other non-binding agreements as exhibits?
- Is the proposed two business day filing deadline workable with respect to the disclosure that this item would require? Would the proposed deadline for filing disclosure about a company's entry into a material agreement give rise to any competitive advantages or disadvantages?

Considerations Regarding Business Combinations

Proposed new Item 1.01 would require disclosure of business combination agreements and other agreements that relate to extraordinary corporate transactions. The filing of a Form 8–K for a business combination may require separate filings under Rule 165[56] under the Securities Act of 1933[57] and Rule 14d–2(b)[58] or Rule 14a–12[59] under the Exchange Act.[60] In some circumstances, the filing of the Form 8–K may constitute the first ''public announcement'' of the business combination for purposes of Rule 165 and Rule 14d–2(b) and would trigger a filing obligation under those rules.

Under the current rules, the Commission staff has taken the position that a Form 8–K filing to disclose a merger agreement does not eliminate the need to file pursuant to Rule 165, Rule 14d–2(b) and Rule 14a–12. Public information about the business combination should be located in the filings under Rule 165, Rule 14d–2(b) and Rule 14a–12 for ease of reference for investors. However, to avoid the duplicative filing of the merger agreement, the staff has said that the filing under Rules 165, 14d–2(b) and 14a–12 can incorporate the merger agreement by reference to the Form 8–K.[61] To simplify the filing obligations and avoid the need to make duplicative filings, should the Form 8–K include boxes on the cover page so that the filer

[54] In particular, the proposed instruction states that an agreement would be deemed to be not made in the ordinary course of a company's business, and therefore would have to be disclosed under the proposed item, if the agreement is such as ordinarily accompanies the kind of business conducted by the company, if it involves the subject matter identified in Item 601(b)(10)(ii)(A)–(D) of Regulation S–K. An agreement involving the subject matter identified in Item 601(b)(10)(iii)(A) or (B) also would have to be disclosed unless Item 601(b)(10)(iii)(C) would not require a company to file a material contract involving the same subject matter as an exhibit.

[55] See *In re Time Warner Securities Litigation,* 9 F.3d 259 (2d Cir. 1993) and *In re Healthcare Compare Corp. Securities Litigation,* 75 F.3d 276 (7th Cir. 1996).

[56] 17 CFR 230.165.

[57] 15 U.S.C. 77a *et seq.*

[58] 17 CFR 240.14d–2(b).

[59] 17 CFR 240.14a–12.

[60] Rule 165 provides an exemption from Section 5 of the Securities Act for communications relating to the business combination made before the filing of a registration statement for that business combination if all written communications are filed under Rule 425 [17 CFR 230.425]. Rule 14d–2(b) allows communications by the bidder before the commencement of the tender offer provided that all written communications are filed. Rule 14a–12 allows solicitations to be made before furnishing a proxy statement meeting the requirements of Rule 14a–3(a) [17 CFR 240.14a–3(a)] if the written solicitations are filed.

[61] See Q&A No. I.B.13, Manual of Publicly Available Telephone Interpretations, Third Supplement, July 2001.

can indicate that the filing of the Form 8–K will also satisfy the filing obligation under Rule 165, Rule 14d–2(b) and/or 14a–12? [62]

Item 1.02 Termination of a Material Agreement

The obvious converse to entry into a material agreement is the termination of a material agreement. If a material agreement not made in the ordinary course of business to which the company is a party is terminated, the company would have to furnish or provide the following: [63]

- The identity of the parties to the agreement and a description of any material relationship between any of the parties other than in respect of the agreement;
- A brief description of the agreement;
- A description of the material circumstances surrounding the termination;
- Any material early termination penalty incurred by the company; and
- A discussion of management's analysis of the effect of the termination on the company.

Although a company would be required to file a copy of the agreement being terminated as an exhibit to the Form 8–K, the company could satisfy this filing requirement by incorporating by reference a previous filing that includes the agreement. Under the proposed item, companies would not have to disclose negotiations or discussions regarding the termination of an agreement. If the company is not the terminating party, it would not have to disclose information until it receives a written termination notice from the terminating party, unless the agreement provides for notice in some other manner, and all material conditions to termination other than those within the control of the terminating party or the passage of time have been satisfied.[64]

Questions Regarding Proposed Item 1.02

- Are the standards for determining the point at which disclosure about termination of a material agreement would be required under the proposed item appropriate? The proposal states that no disclosure would be required until all material conditions to termination have occurred. Is this a workable standard? Would the standard cause difficulty when there is a legitimate dispute as to whether all material conditions to termination have occurred? Should the rules contain guidance as to when negotiations have ceased?
- Should we limit or expand the proposed disclosure in this item and, if so, how? For example, should we require the proposed disclosure for the expiration of a contract according to its terms?
- Does the proposal cover the proper scope of agreements and instruments?
- Would disclosure of the termination of a material agreement, the entry into which was not disclosed, impose an undue burden on a company? Would investors find such disclosure confusing or misleading?

Item 1.03 Termination or Reduction of a Business Relationship With a Customer

This proposed new item would require disclosure when a company becomes aware that a customer terminates or reduces the scope of a business relationship with the company and the loss of revenues to the company from such termination or reduction equals 10% or more of the company's consolidated revenues during the company's most recent fiscal year. For purposes of the proposed item, a group of customers under common control or customers that are affiliates of each other would be regarded as a single customer. This test is similar to the test in Item 101 of Regulation S–K.[65] An instruction to the proposed item states that no disclosure is required if the company is in negotiations or discussions with a customer, or a suspension or reduction of orders occurs, unless and until an executive officer of the company is aware that the termination or reduction has occurred or will occur.

Questions Regarding Proposed Item 1.03

- We solicit comment on the proposed 10% consolidated revenues threshold. Should the 10% test be higher or lower?
- Rather than the proposed 10% test, should we base the filing requirement on a materiality threshold?
- Should there be a different threshold for small business issuers than for larger companies?
- Should we use a measurement period other than the company's most recent fiscal year for determining whether the loss exceeds the 10% threshold? If so, please specify the period that would be more appropriate and explain why.

Question Regarding Proposed Section 1

We solicit comment as to whether there are other types of highly significant corporate events that should be included within the proposed Section 1 category of disclosure items (''Registrant's Business and Operations'').

Section 2—Financial Information

Item 2.01 Completion of Acquisition or Disposition of Assets

This proposed item would retain most of the substantive requirements included in Item 2 of existing Form 8–K. Item 2 currently requires disclosure if a company or any of its majority-owned subsidiaries has acquired or disposed of a significant amount of assets, otherwise than in the ordinary course of business. Under the proposed changes, a company would report its entry into a material agreement to acquire or dispose of assets under proposed new Item 1.01, Entry into a Material Agreement. However, we recognize that there may be a significant time lag between the entry into the acquisition or disposition agreement and the final closing of the transaction. During this period, substantial uncertainties may exist which could prevent or delay completion of the transaction. Such uncertainties are reflected in the market price of the parties' securities. Although termination of such agreements would be reported under proposed Item 1.02 of Form 8–K, Termination of a Material Agreement, we believe that investors would benefit from continued prompt reporting about the company's completion of its acquisition or disposition of a significant amount of assets.

Proposed Item 2.01 would continue to require the same basic disclosure as required by existing Item 2, except that disclosure in existing Item 2(b) no longer would be required about the nature of the business in which the acquired assets were used and whether the company acquiring the assets intends to continue such use. Furthermore, the proposed new item would revise the wording regarding disclosure of the source of funds to make the requirements clearer. The

[62] The Form 8–K filing would have to include the legends required by those rules. Also, the appropriate EDGAR tag (specifically, ''425'', ''TO–C'' or ''DEFA14A'') also would be necessary. The staff interpretation regarding incorporation by reference will not be necessary if we adopt the proposals and allow the Form 8–K to satisfy the filing obligation under Rules 165, 14d–2(b) and 14a–12.

[63] Because we propose that these proposals would apply prospectively only, a company may not have filed, under proposed Item 1.01, a material agreement entered into before the adoption date of that item. Nevertheless, proposed Item 1.02 would require disclosure if such an agreement is terminated after the adoption date. See Instruction 2 to proposed Item 1.02.

[64] Instruction 1 to proposed Item 1.02.

[65] 17 CFR 229.101. See, in particular, Item 101(c)(1)(vii) of Regulation S–K [17 CFR 229.101(c)(1)(vii)].

proposed wording would more closely track Item 3 of Schedule 13D,[66] which presents the requirements in more detail. There are no substantive differences between the proposed disclosure requirements and the requirements in existing Item 2 of Form 8–K.

We propose to retain the existing test for determining whether an acquisition or disposition involves a ''significant amount of assets'' because of companies' familiarity with this test. Under this standard, companies must disclose only acquisitions or dispositions of assets whose value or cost exceeds 10% of the company's total assets.

Retention of the 10% test in this proposed item may, however, result in some incongruence between this item and proposed Item 1.01. Proposed Item 1.01 does not include a 10% threshold, but rather requires disclosure about any material agreement. This leaves open the possibility that a company could determine an agreement to acquire or dispose of assets whose value or cost is 10% or less of the company's total assets to be material.[67] In this circumstance, under the proposals, the company would file a Form 8–K when it enters into the agreement, but would not file a Form 8–K when it completes the acquisition or disposition.

Questions Regarding Proposed Item 2.01

- We solicit comment on whether we should modify Item 2 to existing Form 8–K in the manner proposed.
- Would investors benefit from disclosure about a company's completion of an acquisition or disposition if we require disclosure about the company's entry into the agreement underlying the transaction?
- Should we harmonize the thresholds for disclosure used in proposed Items 1.01, 1.02 and 2.01 with respect to agreements to acquire or dispose of assets? If so, should we extend the 10% test to proposed Items 1.01 and 1.02? Or should we tie proposed Item 2.01 to the more general ''materiality'' test used in proposed Items 1.01 and 1.02?

Item 2.02 Bankruptcy or Receivership

This proposed item would retain the basic substantive requirements included in Item 3 of existing Form 8–K. We propose only minor changes to make the item more readable, such as breaking out embedded lists from the text and moving some language currently included in the text into an instruction to the item.

Questions Regarding Proposed Item 2.02

- We solicit comment as to whether we should make any substantive changes to existing Item 3 of Form 8–K.
- Do the streamlining amendments make the item more understandable?

Item 2.03 Creation of a Direct or Contingent Financial Obligation That Is Material to the Registrant

This proposed new item would require a company to disclose information whenever it or a third party enters into a transaction or agreement that creates any material direct or contingent financial obligation to which the company is subject.[68] Disclosure would be required under this proposed item whether or not the company is a party to the agreement. For example, a loan agreement entered into by an affiliate of the company or third party that benefits from a pre-existing guarantee or keepwell agreement of the company would trigger a disclosure requirement whether or not the company is a party to the loan agreement. Disclosure would be required only when the company or a third party enters into a definitive agreement that is unconditional or subject only to customary closing conditions.

Proposed Item 2.03 would require a company to file the document, if any, subjecting the company to the direct or contingent financial obligation as an exhibit to Form 8–K and disclose or provide:

- A brief description of the transaction or agreement, including an identification of the parties to the agreement;
- The nature and amount of the company's material direct or contingent financial obligation, including a description of events that may cause the obligation to arise, increase or become accelerated;
- If applicable, the name of any underwriters or placement or other agents for the transaction or any persons performing a similar function in the case of a private transaction, and the amount of any fee or other compensation paid to them, or the name of any lenders or other persons who are the beneficiaries of the obligation; and
- A discussion of management's analysis of the effect of the direct or contingent financial obligation on the company.

This proposed item also is intended to require disclosure of the creation of other financial obligations, including direct obligations such as registered sales of debt securities, private placements and bank loans or credit facilities, and contingent obligations such as guarantees, keepwell agreements,[69] obligations to purchase assets that are unconditional or conditioned on certain events, and similar financial obligations.

Questions Regarding Proposed Item 2.03

- This proposed item would cover a broad scope of obligations. We solicit comment on whether the scope of obligations covered by this proposed item is appropriate. Is it too broad? If so, how should we narrow it?
- Conversely, are there any obligations not covered by this item that should be? Should the item cover any non-financial obligations?
- Should we limit disclosure to obligations with respect to which a specified level of probability exists that a contingency would occur? For example, should we require disclosure only if the contingency is likely to occur? If there is a significant possibility that the contingency would occur? Should we not require disclosure if the possibility that the contingency would occur is remote? How would we define ''remote contingencies'' if we were to exclude them?
- Would the proposed item require too much, or too little, disclosure about such obligations?
- Is the meaning of ''direct financial obligation'' sufficiently clear? Would a definition of this term be helpful?
- Is the proposed definition of ''contingent financial obligation'' appropriate? If not, how should we change it? Note that the proposed list of examples of contingent obligations included in the proposed definition is not exclusive. Is there any example that we should remove from the list? Should we define ''contingent financial obligation'' in more detail? Is the proposed definition of ''keepwell agreement'' appropriate?
- As in the case of proposed Items 1.01 and 1.02, the disclosure in this

[66] 17 CFR 240.13d–101.

[67] See, for example, *TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438 (1976), *Basic, Inc.* v. *Levinson,* 485 U.S. 224 (1988), *SEC* v. *Texas Gulf Sulphur Co.,* 401 F.2d 833 (2d Cir. 1968), and *Ganino* v. *Citizens Utilities Co.,* 228 F.3d 154 (2d Cir. 2000).

[68] Instruction 4 to proposed Item 2.03 specifies that the term ''contingent financial obligation'' includes guarantees, co-obligor arrangements, obligations under keepwell agreements, obligations to purchase assets and any similar arrangements and all other obligations that exist or may arise under an agreement.

[69] Instruction 4 to proposed Item 2.03 defines a ''keepwell agreement'' as any agreement or undertaking under which the company is, or would be, obligated to provide or arrange for the provision of funds or property to an affiliate or third party.

proposed item is tied to a ''materiality'' standard rather than a specific financial threshold. Because this item addresses financial obligations, would it be more appropriate to tie the proposed disclosure to a financial standard, such as a percentage of assets, equity, revenues or net income? If so, what should the standard be? Should the standard be 1%, 5%, 10% of assets, equity, revenues or net income? Or should it be some different percentage any of these? Should we use a different financial measure? If so, what?

Item 2.04 Events Triggering a Direct or Contingent Financial Obligation That Is Material to the Registrant

This proposed new item would require a company to disclose events triggering a direct or contingent financial obligation that is material to the company. The proposed item would define a ''triggering event'' as an event, including an event of default, event of acceleration or similar event, that has occurred and as a consequence of which, either: (1) A material direct or contingent financial obligation of the company that is unconditional or subject to no condition other than the passage of time has arisen (including as a result of an increase in an obligation) or been accelerated; or (2) a party to the agreement obtains the unconditional right to cause such an obligation to arise or become accelerated, regardless of whether in either case the company is a defaulting party. The events requiring disclosure under this proposed item would include a default on a security that would subject the company to a material financial obligation.[70]

Under the proposed item, no triggering event would be deemed to have occurred while the company is negotiating or discussing with other relevant parties whether a triggering event has occurred, or whether such event could be cured by waiver, amendment or similar arrangement. Despite any ongoing negotiations, disclosure is required when a party to the agreement with the right to do so notifies the company or otherwise declares that the triggering event has occurred. Such notice must be in writing unless the agreement provides for notification in another manner.

Under the proposals, if a triggering event occurs, the company would have to:

- Describe the agreement or agreements under which the triggering event occurred;
- Describe the triggering event;
- Disclose the nature and amount of the material direct or contingent financial obligation of the company that may arise, increase or become accelerated as a result of the triggering event, including obligations under cross-default, cross-acceleration or similar arrangements; and
- Discuss management's analysis of the effect on the company of the triggering event and of the obligation that has arisen, increased or been accelerated.

Disclosure would be required under this proposed item regardless of whether the company is a party to the agreement under which the triggering event occurs. The company would be required to file as an exhibit to Form 8–K, by incorporation by reference or otherwise, a copy of the document under which the company is subject to the material direct or contingent financial obligation. For purposes of the proposed item, a contingent financial obligation includes: a guarantee, a co-obligor arrangement, an obligation under a keepwell agreement, an obligation to purchase assets and any similar arrangement or obligation that exists or may arise under an agreement.[71]

This proposed new item is intended to subsume all events that currently are reported under Item 3, Defaults Upon Senior Securities, in Part II of Forms 10–Q and 10–QSB. As discussed later in this release, we propose to delete Item 3 from Part II of Forms 10–Q and 10–QSB if we adopt this proposed item.

Questions Regarding Proposed Item 2.04

- We solicit comment on the proposed definitions of the terms ''triggering event,'' ''contingent financial obligation'' and ''keepwell agreement'' for purposes of proposed Item 2.04.
- We request additional comment on the specific disclosures that the proposed item would require. Are they sufficient? Would a company be able to provide the required disclosures within two business days?
- As in the case of proposed Items 1.01, 1.02 and 2.03, this proposed item would tie disclosure to a ''materiality'' standard rather than to a specific financial threshold. Would it be more appropriate to tie this proposed disclosure to a financial measure, such as a percentage of assets, equity, revenues or net income? If so, what should that measure be? Should the standard be 1%, 5%, 10% of assets, equity, revenues or net income? Or should it be some different percentage any of these? Should we use a different financial measure? If so, what?
- The proposed item would not require disclosure when the company is still negotiating waivers or amendments of triggering events. Should we require disclosure in such circumstances? If so, at what point in the negotiations? Is it important to investors to know that these negotiations are occurring? Would disclosure of such events frustrate the purpose of the negotiations or otherwise unduly harm the interests of the company?
- Should we delete Item 3 from Part II of Forms 10–Q and 10–QSB if we adopt this proposed item? Is there any situation with respect to which Item 3 currently requires disclosure that would not be covered by the proposed new item?

Item 2.05 Exit Activities Including Material Write-Offs and Restructuring Charges

This proposed new item would require disclosure when the board of directors or the company's officer or officers who are authorized to take such action, if board approval is not required, definitively commits the company to a course of action, including a plan to terminate or exit an activity, under which the company will incur a material write-off or restructuring charge under generally accepted accounting principles.[72] Under the proposed item, a company would have to disclose:

- The date on which such commitment was made;
- A description of the course of action and reasons for the write-off or restructuring charge;
- A description of the asset or assets subject to write-off;
- The estimated amount of the write-off or restructuring charge;
- The estimated amount of the write-off or restructuring charge that will result in future cash expenditures; and
- An analysis of the effect of the write-off or restructuring charge on the company, including the segment affected.

Questions Regarding Proposed Item 2.05

- Is the triggering event for this proposed item sufficiently clear? Is the

[70] This would include defaults that currently are required to be disclosed under existing Item 3 of Form 10–Q.

[71] Instruction 2 to proposed Item 2.04. This instruction also defines a ''keepwell agreement'' to mean any agreement or undertaking under which the registrant is, or would be, obligated to provide or arrange for the provision of funds or property to an affiliate or other third party.

[72] See Emerging Issues Task Force (EITF) Issue 94–3, Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring), which requires that companies recognize certain restructuring charges at the date management commits to a plan.

point at which the board of directors or its authorized officer or officers commit a company to a course of action such as a plan to terminate or exit an activity a workable trigger for the proposed disclosure? Is there a better point from which to measure the deadline for a company's reporting obligation? As an alternative, should this event be triggered when an appropriate party takes action to execute the commitment, rather than when the commitment to action is made?

- Are there other individuals or groups that may have the responsibility of taking the action that would trigger the proposed disclosure? For example, do audit committees take these actions for companies?
- Should we require disclosure only if the expected charge would represent a certain percentage, such as 1%, 5%, or 10%, of the company's assets, equity, revenues or net income? Should it be another percentage of these items? If so, what?
- Is the scope of events covered by this proposed item appropriate? Should we require disclosure of other related events as well?
- Is the scope of disclosure appropriate? Should we require companies to disclose any other information in the Form 8–K report? For example, should we require companies to disclose the information required by EITF 94–3? Would a company have sufficient time to gather the information required to be disclosed, including calculation of an estimate of the amount of the write-off or restructuring charge that the company will incur? Are there situations where the accounting treatment is determined more than two business days after the business decision to terminate or exit an activity? If so, how should we deal with this situation?
- Should we require a company to update its report on Form 8–K if there is a material change in the amount or expected effect of the write-off or restructuring charge?

Item 2.06 Material Impairments

This proposed new item would require disclosure when a company's board of directors or the company's officer or officers authorized to make the relevant conclusion, if board approval is not required, concludes that the company is required to record a material charge for impairment to one or more of its assets, including an impairment of securities or goodwill, under generally accepted accounting principles. Specifically, the company would have to disclose:

- The date on which the conclusion was reached;
- A description of the asset or assets subject to impairment and the facts and circumstances leading to the impairment;
- The estimated amount of the impairment charge; and
- An analysis of the effect of the impairment charge on the company, including the segment affected.

Questions Regarding Proposed Item 2.06

- Is the triggering event for this proposed item sufficiently clear? Is the point at which the board of directors or the authorized officer or officers conclude that the company is required to record a material charge for an impairment of an asset a workable trigger for the disclosure that would be required by this proposed item? Is there a better point from which to measure the deadline for a company's reporting obligation? As an alternative, should this event be triggered when the appropriate party actually records the charge rather than when a conclusion is drawn that the company must record the charge?
- Are there other individuals or groups that may have the responsibility of making the conclusion that would trigger the proposed disclosure? For example, do audit committees make these conclusions for companies?
- Should we require disclosure only if the expected charge would represent a certain percentage, such as 1%, 5%, or 10%, of the company's assets, equity, revenues or net income? Should it be another percentage of these items? If so, what?
- Is the scope of events covered by this proposed item appropriate? Should we require disclosure of other related events as well?
- Is the scope of disclosure appropriate? Should we require companies to disclose any other information in the Form 8–K report? For example, should we require disclosure of the asset's carrying value after the impairment charge? Would a company have sufficient time to gather the information required to be disclosed, including calculation of an estimate of the amount of the impairment charge? Are there situations where the accounting treatment is determined more than two business days after the conclusion is made to take an impairment charge? If so, how should we deal with this situation?
- Should we require a company to update its report on Form 8–K if there is a material change in the expected effect of the event?

Question Regarding Proposed Section 2

We solicit comment as to whether there are other types of highly significant corporate events that should be included within the proposed Section 2 category of disclosure items (''Financial Information'').

Section 3—Securities and Trading Market

Item 3.01 Rating Agency Decisions

This proposed new item would require a company to file a report when it receives a notice or other communication from any rating agency to whom the company provides information to the effect that the organization has decided to:

- Change or withdraw the credit rating assigned to, or outlook on, the company or any class of debt or preferred security or other indebtedness of the company (including securities or obligations as to which the company is a guarantor or has a contingent financial obligation);
- Refuse to assign a credit rating to the company, to any class of its securities, or to any of its indebtedness after the company has requested the organization to do so;
- Place the company or any class of its securities or indebtedness on ''credit watch'' or similar status; or
- Take any similar action.

Under the proposed item, the company would have to disclose the date that the company received the rating agency's notice or communication, the name of the rating agency, and the nature of the rating agency's decision. The company also would have to discuss management's analysis of the effect of the change or other decision on the company. Disclosure under this item would not be required until the rating organization notifies the company that the rating organization has made a decision to take one of the enumerated actions. If the company is still in negotiations or appealing a preliminary indication that a rating agency intends an action covered by the proposed item, no disclosure would be required. However, once all good faith negotiations and appeals cease, disclosure would be required.

We note that there are many organizations that currently provide ratings of companies, their securities, and their indebtedness.[73] Some of these ratings are solicited by the company, and others are not. This proposed item

[73] We plan to engage in a thorough examination of the role of rating agencies in the U.S. securities markets.

does not distinguish between solicited and unsolicited ratings, except that a company only would have to disclose a rating agency's refusal to issue a rating if the company requested a rating. Because the proposed item would require disclosure only if the rating agency notifies or otherwise communicates with the company about its intended action and the company has provided information to the rating agency (other than annual reports or filings with the Commission), a company would not have to constantly monitor actions taken by all rating agencies to determine whether they are rating the company or its securities on an unsolicited basis. The issue of whether or not the company compensates the rating agency would be irrelevant under the proposed item. For purposes of the proposed item, a ''rating agency'' would mean an entity whose primary business is the issuance of credit ratings.[74]

Rating organizations typically disclose rating changes publicly via press release at the same time or shortly after they notify affected companies of the changes. Therefore, investors already can rapidly obtain access to information about rating changes if they know where to find the press releases and are willing to routinely monitor these releases to find information about particular companies and securities. However, some investors may not routinely monitor all press releases issued by ratings organizations and therefore likely would benefit from disclosure about ratings changes filed by companies on Form 8–K.

In 1994, we issued a proposal to require companies to disclose ratings changes in their Form 8–K reports.[75] Although we did not adopt the proposal, we recognize that such rating changes can have a material impact on a company and its publicly traded securities. Therefore, such information can be useful to an investor in making investment and voting decisions. Although the Commission does not endorse the validity or accuracy of securities ratings, we recognize that investors find rating changes ''newsworthy.''

Questions Regarding Proposed Item 3.01

- Is this proposed item necessary in view of the typical practice by rating organizations to promptly issue press releases about rating changes? Is current disclosure by rating agencies through press releases adequate? Would investors benefit from having companies disclose this information in a uniform place?
- Should we limit the disclosure to ratings by nationally recognized statistical rating organizations? Should we limit the disclosure to some other specified group of rating agencies? Is the definition of ''rating agency'' adequate?
- Should we require the proposed disclosure only if there is a contractual relationship between the rating agency and the company?
- Should we provide more guidance as to when a company has provided sufficient information to an agency to require disclosure?
- Do significant delays between a rating organization's decision to make a rating change and public announcement of the change frequently occur?
- We also solicit comment as to whether the types of actions that would trigger the proposed item are appropriate. Are there other actions by a rating organization that should trigger the proposed disclosure? For example, should we require disclosure when a rating agency changes an outlook on an entire industry group to which a company belongs?

Item 3.02 Notice of Delisting or Failure to Satisfy Listing Standards; Transfer of Listing

This proposed new item would require a company to report any notice from the national securities exchange or national securities association that is the principal trading market for a class of the company's common stock or similar equity securities that the company or a class of its securities no longer satisfies the listing requirements or standards of the exchange or association, or that a class of the company's securities has been delisted by the exchange or association.[76] Specifically, a company would have to file a copy of the notice, if in writing, and disclose or provide:

- The date that it received the notice;
- The listing requirement or standard that the company failed to satisfy or the reason for the delisting as indicated by the exchange or association; and
- A discussion of the company's planned response to the notice and management's analysis of the effect of the delisting or failure to satisfy a listing standard on the company.

This proposed item also would require a company to file a Form 8–K when the company has taken definitive action to terminate the listing of a class of its common stock or similar equity securities on the exchange or inter-dealer quotation system that is the principal trading market for those securities, including by reason of a transfer of the listing or quotation to another securities exchange or quotation system. In the Form 8–K, the company would have to describe the action taken and state the date of the action.

Questions Regarding Proposed Item 3.02

- Should the company have to file the notice as an exhibit to Form 8–K, as proposed, or is the required disclosure sufficient? Conversely, if the company has to file the actual notice, should we require less disclosure about the notice?
- Is the requirement to file a report upon receipt of a notice that the company no longer satisfies a listing requirement premature? Would such a filing adversely affect the liquidity of the company's securities so as to warrant removal of this requirement?
- Should we not require disclosure under this proposed item while the company is negotiating with or appealing a decision by an exchange or association regarding delisting or the company's failure to satisfy a listing standard following notice?
- Should we require disclosure only upon actual delisting, rather than when the company receives notice that its securities may be delisted? Should we require disclosure both when the company receives notice about a possible delisting and when the company's stock actually is delisted?

Item 3.03 Unregistered Sales of Equity Securities

This proposed item would require a company to disclose the information in paragraphs (a) through (e) of Item 701 of Regulation S–K regarding the company's sale of equity securities in a transaction that is not registered under the Securities Act. This disclosure currently is required in Item 2(c) of Forms 10–Q and 10–QSB and Item 5(a) of Forms 10–K and 10–KSB.[77] We propose to move this disclosure from companies' annual and quarterly reports to Form 8–K. We believe that more timely disclosure of this information will benefit investors due to the fact that unregistered sales of equity securities can have a significant dilutive effect on existing investors' holdings.

[74] Instruction 3 to proposed Item 3.01. This term is used in the proposed item the same way that it is used in Rule 100(b)(2)(iii) of Regulation FD [17 CFR 243.100(b)(2)(iii)].

[75] Release No. 33–7086 (Aug. 31, 1994) [59 FR 46304].

[76] For example, Section 802.02 of the NYSE Listed Company Manual requires a domestic company to issue a press release stating that it has fallen below a continued listing standard of the exchange within 45 days after receiving notice from the NYSE.

[77] See 17 CFR 249.308a, 249.308b, 249.310 and 249.310a.

Questions Related to Proposed Item 3.03

• We solicit comment as to whether we should move this disclosure to Form 8–K. Would investors benefit from more prompt disclosure of unregistered sales of a company's equity securities?

• Do we need to define the term ''sells in a transaction'' for purposes of this proposed item?

• Should the proposed item permit companies to aggregate sales occurring within a short period of time? If so, during what period should we permit aggregation?

• Even if we move this disclosure to Form 8–K as proposed, should we continue to require it in a company's quarterly and annual reports? Is there value to requiring an aggregate listing of sales made during the periods covered by these reports, even though the Form 8–K would report each sale as it occurs?

• Should we limit Form 8–K disclosure to only large unregistered sales? How should we define ''large''? Should it be based on a percentage, such as 1%, 5% or 10%, of the company's outstanding shares? Should it be based on a percentage, such as 1%, 5% or 10%, of the market float?

Item 3.04 Material Modifications to Rights of Security Holders

This proposed item would require a company to disclose material modifications to the rights of holders of any class of the company's registered securities, and to briefly describe the general effect of such modifications on the company's security holders. In 1977, we moved this item from Form 8–K to Form 10–Q to lessen the burden on companies.[78] Under current requirements, a reporting company must disclose the general effects of those modifications in the Form 10–Q or Form 10–QSB for the quarter in which the modifications occur. That requirement allows reporting companies to delay filing this information for up to four and a half months after security holder rights have been modified. That timing is unnecessarily long given the significance of these matters to security holders and the possibility that modifications to their rights could dramatically affect the value of the securities they own. The substance of the disclosure would be the same as currently required by Items 2(a) and (b) of Forms 10–Q and 10–QSB.[79]

Questions Regarding Proposed Item 3.04

• We solicit comment as to whether we should move this disclosure to Form 8–K. Would investors benefit from more prompt disclosure of these events?

• Even if we move this disclosure to Form 8–K as proposed, should we continue to require it in a company's quarterly reports?

• Should we require disclosure of such modifications only if the class of securities modified is registered or, in the case of unregistered debt, constitutes a certain percentage, such as 5%, of the company's assets?

Question Regarding Proposed Section 3

We solicit comment as to whether there are other types of highly significant corporate events that should be included within the proposed Section 3 category of disclosure items (''Securities and Trading Market'').

Section 4—Matters Related to Accountants

Item 4.01 Changes in Registrant's Certifying Accountant

This proposed item is substantively the same as Item 4 of existing Form 8–K. The only revision that we propose to make to the existing item is deletion of the phrase ''and the related instructions to Item 304.'' We believe that it is implicit that a company will consider and comply with the instructions to our disclosure items. Therefore, we propose to delete this phrase as unnecessary.

Questions Regarding Proposed Item 4.01

• We solicit comment on whether we should make any changes to the substantive requirements imposed by Item 4 of existing Form 8–K.

• Should we require similar disclosure regarding a change in the auditor of a company's employment benefit plan if that auditor is different from the company's independent accountant?

Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report

This proposed new item would require a company to file a Form 8–K if and when its audit committee, or the board of directors in the absence of an audit committee, or the company's officer or officers authorized to take such action, concludes that any of the company's previously issued financial statements no longer should be relied upon. A company similarly would be required to file a Form 8–K if and when it receives notice from its current or a previously engaged independent accountant that the company should take action to prevent future reliance on a previously issued report related to any such financial statements.[80] The financial statements and audit reports covered by this proposal are those required pursuant to Regulation S–X[81] or Regulation S–B. This proposed item would require the company to file the notice, if it is in writing, and disclose or provide:

• The date on which the conclusion was reached or the registrant received the notice;

• A description of the events giving rise to the conclusion or notice related to the reliability of the financial statements;

• A statement of whether the audit committee, or the board of directors in the absence of an audit committee, discussed with the independent accountant the subject matter giving rise to the conclusion or notice; and

• A description of management's plans to alleviate the reliance issue.

In addition, when the company files a Form 8–K in response to a notice from the independent accountant, the company would have to provide the independent accountant with the Form 8–K disclosure no later than the business day after it files and request that the accountant furnish a letter to the company as soon as possible stating whether the accountant agrees with the disclosure, and if not, the respects in which it disagrees. Within two business days after it receives a letter from the accountant, the company would have to file that letter as an exhibit by amendment to the relevant Form 8–K.

Questions Regarding Proposed Item 4.02

• Would the proposed item elicit disclosure about any events that do not relate to the validity of the financial statements or report itself?

• Are there other actions taken by an independent accountant with respect to a previously issued audit report that should be disclosed?

• Should we require disclosure of events relating to a company's quarterly financial statements?

• We request comment as to whether the company should have to describe

[78] See Release No. 34–13156 (Jan. 13, 1977) [42 FR 4424].

[79] See 17 CFR 249.308a and 249.308b.

[80] See Codification of Statements on Auditing Standards AU § 561.06. In 1998, we proposed a similar item that would have required disclosure in situations covered by proposed Item 4.02 but also when the independent auditor notifies the company that the auditor will not consent to the use of its prior audit report in a filing with the Commission. We received comments noting that if we required such disclosure, we could elicit disclosure about events that do not implicate a problem with the report itself, such as when a company's independent accountant refuses to give its consent due to a fee dispute with the company. Therefore, the proposed disclosure is not triggered by an independent accountant's unwillingness to grant its consent to the company's use of a previously issued audit report.

[81] 17 CFR 210.1–01 *et seq.*

the events giving rise to the company's conclusion or the independent accountant's notice and whether the proposed disclosure regarding any discussions between the company's audit committee or board and the independent accountant regarding the subject matter of the notice is appropriate.

• Should the company have to furnish the disclosure required by the proposed item to the independent accountant? If so, should the company have to send the required disclosure to the independent accountant before it files the Form 8–K with the Commission? On the same day as the company files the Form 8–K?

• Should the independent accountant be asked to respond to the company's request for a letter by a specific date rather than ''as soon as possible'' after the company makes the request? Finally, should the company have to file the independent accountant's letter as an exhibit to the Form 8–K? If yes, should the company have to file the letter within two business days after the company receives it, as proposed? Should the proposed two business day period be shorter or longer?

Question Regarding Proposed Section 4

We solicit comment as to whether there are other types of highly significant corporate events that should be included within the proposed Section 4 category of disclosure items (''Matters Related to Accountants'').

Section 5—Corporate Governance and Management

Item 5.01 Changes in Control of Registrant

This proposed item is substantively the same as Item 1 of existing Form 8–K. We propose only to streamline this existing disclosure by, for example, breaking out lists and rearranging the requirements set forth in the item. Although the proposed item would continue to require disclosure regarding the source of funds used to effect a change in control, the proposed item would revise the wording regarding disclosure of the source of funds to make the requirements clearer. The proposed wording would more closely track Item 3 of Schedule 13D,[82] which is more detailed. There are no substantive differences between the proposed disclosure requirements and the requirements in existing Item 1 of Form 8–K.

We also propose to add an instruction to the item to clarify that responses may be made by incorporation by reference of disclosure from an earlier filing. Hence, if the change of control occurs as a result of a previously reported merger agreement, any relevant details of the agreement could be furnished by the company's incorporation by reference of that earlier report.

Questions Regarding Proposed Item 5.01

• We solicit comment as to whether the proposed change to the source of funds disclosure is appropriate.

• Should we make any substantive amendments to Item 1 of existing Form 8–K?

• Should companies be allowed to respond to certain of the disclosure requirements by incorporation by reference to an earlier report? Would it be more appropriate to require companies to repeat prior disclosure in the report so that investors need not search for the previously filed report?

Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers

a. Disclosure Under Proposed Item 5.02(a) When a Director Resigns or Declines to Stand for Re-Election Due to a Disagreement or Is Removed for Cause

This proposed item would be similar to Item 6 of existing Form 8–K in that both the proposed and existing items pertain to the resignation of a corporate director. However, the proposed item would add several new substantive requirements.

Currently, Item 6 requires disclosure only if a director departs as a result of a disagreement, provides a letter to the company describing the disagreement and requests that the company publicly disclose the matter. Thus, the burden of knowing what actions are necessary to trigger disclosure pursuant to the item is placed solely on the director. If the director desires the company to disclose information about the disagreement, but is not aware that he or she must formally request the company to make such disclosure, no disclosure is required.

Under the proposal, if a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of shareholders because of a disagreement with the company, known to an executive officer of the company, on any matter relating to the company's operations, policies or practices, or if a director has been removed for cause from the board of directors, the company would have to disclose:

• The date of such resignation, declination to stand for re-election, or removal;

• Any positions held by the director on any committee of the board of directors before the director's resignation, declination to stand for re-election, or removal; and

• The circumstances of the director's resignation, declination to stand for re-election or removal.

If the director furnishes the company with any written correspondence concerning the circumstances surrounding his or her resignation, declination, or removal, the company would have to summarize the contents of that correspondence and file a copy of the correspondence as an exhibit to the report on Form 8–K regardless of whether the director requests disclosure of its contents. Furthermore, the company would have to provide the director with a copy of the disclosures it is making in response to this proposed item that the director would have to receive no later than the business day following the day that the company files the disclosures with the Commission. The company would have to request the director to furnish the company with a letter addressed to the Commission as soon as possible stating whether he or she agrees with the company's disclosures and, if not, stating the respects in which he or she does not agree. Finally, the company would have to file the director's letter with the Commission within two business days after receipt as an exhibit by amendment to the report on Form 8–K.

Questions Regarding Item 5.02(a)

• Is it appropriate to modify the existing disclosure requirements and disclosure trigger in the manner proposed when a director resigns or declines to stand for re-election or is removed for cause?

• Should the company have to file any written correspondence from a director regarding the director's resignation, declination or removal as a Form 8–K exhibit?

• Should the company have to describe the circumstances of the director's resignation, declination or removal? If so, should the company have to send the disclosure to the director? Should the company have to send the disclosure to the director before it files the Form 8–K with the Commission? Should the company have to ask the director to furnish the company with a response? On the same day as the company files the Form 8–K?

• Should the director be asked to respond to the company's request for a letter by a specific date rather than ''as soon as possible'' after the company makes the request?

[82] 17 CFR 240.13d–101.

• Should the company have to file the director's letter as a Form 8–K exhibit? If yes, should the company have to file the letter within two business days after the company receives it as proposed? Should the proposed two day period be shorter or longer?

• Also, would the proposals provide sufficient time for the company to make the required disclosures? If not, how much time would be required? Why?

b. Disclosure Under Proposed Item 5.02(b) When Certain Officers Resign or Are Terminated From a Position and Disclosure When a Director Resigns, Is Removed or Declines To Stand for Re-Election for Any Reason Other Than as a Result of a Disagreement or for Cause

Proposed Item 5.02(b) would require disclosure when the company's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer or any person serving in an equivalent position resigns or is terminated from that position. Therefore, if an officer is removed from one of the stated positions and reassigned elsewhere, disclosure would be required. The company would have to disclose the date that the event occurs and the reasons for the event. It also would require disclosure when a director resigns, is removed or declines to stand for re-election for any reason other than as a result of a disagreement or for cause.

One important difference between the proposed disclosure under this Item 5.02(b) and the proposed disclosure about a director's departure because of a disagreement under proposed Item 5.02(a) is that if an officer resigns, is terminated or reassigned, as the result of a disagreement with the company, the company would not be obligated to disclose the reasons for, or seek the officer's explanation of, the departure as it would be if a director departed under similar circumstances. We believe that the nature of the relationship between a director and the company's security holders, including the security holders that elect directors, is sufficiently different to justify the expanded procedures for directors. The function of directors is to oversee the company for the shareholders to whom they are directly answerable.

Questions Regarding Proposed Item 5.02(b)

• Should the item impose an obligation on the company to describe any disagreement between a departing officer and the company? If so, should this be the case only with respect to certain types of disagreements, *e.g.,* a disagreement over an accounting matter, or only with respect to certain types of officers, *e.g.,* financial officers? Should the item impose an obligation on the company to solicit an explanation from the departing officer of the reasons for his or her departure?

• Should we require disclosure of the reasons for an officer's or director's departure in instances where there is no dispute between the officer or director and the company?

• Is the list of officers covered by the proposed item appropriate? Should we require disclosure regarding the departure of other officers as well? If so, which officers?

• With respect to the resignation of one of the listed officers, is the timing appropriate? Should we delay the disclosure requirement until the officer or the company otherwise publicly announces a planned departure?

c. Disclosure Under Proposed Item 5.02(c) and (d) When the Company Appoints Certain New Officers or a New Director Is Elected

This proposed item also would require disclosure if the company appoints a new principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or person serving an equivalent function. If such an event occurs, proposed Item 5.02(c) would require the company to disclose the officer's name, position, the date of the appointment, a brief description of any arrangement or understanding pursuant to which the officer was selected as an officer, the information required regarding the officer's background and certain related transactions with the company,[83] and a brief description of the material terms of any employment agreement between the company and that officer.

In addition, if a new director is elected to the board, except by a vote of security holders at an annual meeting, proposed Item 5.02(d) would require disclosure of the new director's name, the election date, a brief description of any arrangement or understanding pursuant to which the new director was selected as a director, any committees to which the new director has been, or at the time of the disclosure is expected to be, named, and information regarding certain related transactions between the new director and the company.[84]

Certain information required to be disclosed regarding new officers and directors would be permitted to be filed by amendment after the company determines this information.

Questions Regarding Proposed Items 5.02(c) and (d)

• Does this proposal require disclosure of an adequate amount of information about new officers and directors? Is there any other pertinent information regarding a new officer or director that should be disclosed when such a person joins a company? Does the proposal require too much disclosure?

• Is it necessary for all of the proposed information to be disclosed immediately? Can some of the disclosures be delayed until the company files its annual report? If so, which disclosure requirements could be delayed?

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

This proposed item would require a company to disclose any amendment to its articles of incorporation or bylaws if the amendment was not disclosed in a proxy statement or information statement filed by the company. Proposed Item 5.03 would require the company to disclose the effective date of the amendment and a description of the provision adopted or changed by amendment and, if applicable, the previous provision. If the amendment changed the company's fiscal year from that used in its most recent filing with the Commission, the company would have to state the date of the new fiscal year end and the form on which the report covering the transition period will be filed. If the company determines to change the fiscal year from that used in its most recent filing with the Commission by means other than a submission to a vote of security holders through the solicitation of proxies or otherwise, or by an amendment to its articles of incorporation or bylaws, the proposal would require the company to state the date of that determination, the date of the new fiscal year end, and the form on which the report covering the transition period will be filed.

This would ensure that security holders are kept apprised of changes to these documents. Presumably, any amendment that is subject to security holder approval will be adequately disclosed in the company's proxy statement. We recognize that a company potentially would have to report changes to its articles of incorporation and bylaws that affect the rights of

[83] Specifically, proposed Item 5.02(c) would require disclosure of the information required by Items 401(d), 401(e) and 404(a) of Regulation S–K (17 CFR 229.401(d) and (e) and 229.404(a)).

[84] Specifically, proposed Item 5.02(d) would require disclosure of information required by Item 404(a) of Regulation S–K [17 CFR 229.404(a)].

security holders under both this proposed item and proposed Item 3.04, Material Modifications to Rights of Security Holders. However, General Instruction D to Form 8–K states that a company need only file one report listing all relevant item numbers. Therefore, the company could file a single Form 8–K and include the disclosure in a single place under the captions for both items.

Questions Regarding Proposed Items 5.03

- Should all amendments of the articles or bylaws require immediate disclosure?
- Should we limit the disclosure requirement to only particular types of amendments? If so, what should the criteria be?

Item 5.04 Material Events Regarding the Registrant's Employee Benefit, Retirement and Stock Ownership Plans

This proposed new item would require a company to disclose any known event that would have the effect of materially limiting, restricting or prohibiting participants in an employee benefit, retirement or stock ownership plan from acquiring, disposing or converting their holdings, other than a periodic or other limitation, restriction or prohibition based on presumed or actual knowledge of or access to material non-public information if that plan is broadly available to the company's employees. This item would require a company to disclose the period or expected period of the limitation, the nature of the limitation, and the circumstances surrounding, or reasons for, the limitation. Such notice is important to investors who are plan participants in making financial decisions and who are entitled to the benefits of the disclosure regime of the U.S. securities laws.

This proposed disclosure would not be necessary when a company imposes temporary trading ''black-outs'' on its senior officers and directors because they possess material non-public information, such as during the period surrounding the announcement of an earnings release or during negotiation of a merger agreement.

Questions Regarding Proposed Item 5.04

- Should we include this disclosure in Form 8–K? Is this information important to investors other than plan participants?
- Might investors who are not part of a relevant plan believe that the limitations apply to them, causing unjustified market reaction?
- If this information is only important to plan participants, is there a better means of ensuring that those plan participants get this information?
- Is it appropriate to carve-out trading black-outs applicable to those with presumed or actual knowledge of or access to material non-public information? Should we otherwise limit the item to events affecting ''all participants'' or ''a majority of the participants''? Would such a limitation exclude events that should be disclosed?
- We note that Congress currently is considering legislation that, among other things, would require companies to provide employees with 30 days notice prior to any lockout period.[85] Would this legislation, if enacted, preempt the need for this proposed item? Should we delay our determination on this item until we can determine whether one of these bills will be enacted?

Question Regarding Proposed Section 5

We solicit comment as to whether there are other types of highly significant corporate events that should be included within the proposed Section 5 category of disclosure items (''Corporate Governance and Management'').

2. Boilerplate Explanations

Throughout the proposed Form 8–K items, there are requirements that companies provide explanations on such issues as management's analysis of the expected effect of an event on the company. These proposals are designed to improve the disclosure made available to the public. General, boilerplate-type statements that an event may have a material adverse effect on the company, or similar statements, provide limited useful disclosure about a corporation.

Therefore, if the proposals are adopted, we would expect responses to these items to be as specific as possible, and we would encourage companies to provide quantitative information whenever possible. We also would urge companies choosing to avail themselves of the safe harbors for forward-looking statements under the Private Securities Litigation Reform Act[86] and the Commission's rules[87] to tailor the required cautionary language to the specific forward-looking statements being made.

3. Request for Comments Regarding Proposed Disclosure Items

- We solicit comment on whether we should add each of the proposed new items to Form 8–K. Are there any items that we should not adopt? Are there additional items about significant corporate events that we should add to Form 8–K? Are there any other disclosure items currently required to be disclosed in companies' annual and quarterly reports, such as disclosure of results of matters submitted to security holder vote, that would more appropriately be the subject of Form 8–K disclosure? If so, which items?
- Are any of the proposed disclosure items, or portions thereof, unnecessary? If so, why?
- Would adoption of the proposed Form 8–K disclosure items add value from an investor perspective? Do investors frequently review companies' Form 8–K reports?
- We are proposing to reorganize the items into sections based on subject matter of the item. Should we provide a general item under each of the proposed sections to solicit disclosure of other important events under that section? For example, under Section 1, Registrant's Business and Operations, should we include an item soliciting disclosure of other material events related to the company's business and operations? If so, should that item be voluntary or mandatory?
- Are the proposed new disclosure items sufficiently clear and detailed?
- Should we add any disclosure requirements to any of the proposed items? Should we modify or delete any of the proposed disclosure requirements within the proposed new items? If we should modify any, how?
- Does the cost of disclosure of any of the items listed above so outweigh the benefits to investors of such disclosure as to warrant exclusion of the item? If so, provide data to support this conclusion.
- Would any of the proposed disclosure requirements discourage a company from entering into transactions that would be beneficial to the company and its investors?
- Would the proposed addition of the new Form 8–K items make the form itself unwieldy or difficult to understand? How can we make the form itself more useful to investors?
- In lieu of, or in addition to, the current approach involving a list of specific disclosure items, should we adopt a broad principle requiring companies to report highly important corporate events, leaving the company to determine the trigger for and scope of

[85] See H.R. 3762 and S. 1969.

[86] 15 U.S.C. 78u–5.

[87] See, for example, Securities Act Rule 175 [17 CFR 230.175].

the necessary disclosure?[88] If so, how should we define the types of events requiring disclosure?

• Would investors find such a system useful? Would companies be able to identify and disclose events in a timely fashion without strict guidelines? Would the open-ended obligation give companies too much discretion in setting the timing and scope of disclosure? Would such a system be more or less costly for companies to administer?

• Should we retain the proposed disclosure items but also require companies to disclose in the Form 8–K other highly significant events that occur within the identified general disclosure categories? If so, how should the category of events requiring disclosure be defined and what should be the triggering event for such disclosure?

• Some of the proposed new items may call for disclosure of forward-looking information regarding the effect of the triggering event. Do we need to consider modifying the current liability standards if we adopt a more generalized requirement for disclosure of material information, including trend information? If so, please explain why and how we should modify the standards.

• Would the requirements imposed by the new items be particularly burdensome to small business issuers? Which items in particular would impose such a burden on small business issuers? Should small business issuers be subject to fewer reporting requirements than larger companies? Should we create a separate form on which small business issuers would be required to disclose such extraordinary events on a current basis?

In our February 13, 2002, press release, we indicated that we were considering adding several new Form 8–K items. As noted earlier in this release, we have not included two of these items in our proposals.[89] These items would require disclosure of waivers of corporate ethics and conduct rules and of a material change in a critical accounting policy. We are continuing to evaluate these items and solicit public comment on the following questions to assist us in our evaluation.

Questions Regarding Waivers of Corporate Codes of Conduct

• Regarding disclosure whenever a company waives one of its corporate ethics or conduct rules, we currently are reviewing possible changes by the self-regulatory organizations to their corporate governance provisions that would address similar issues. For example, the New York Stock Exchange is considering is a requirement that its listed companies adopt and disclose a code of business conduct and ethics for directors, officers and employees, and promptly disclose any waivers of the code for directors or executive officers.[90] Each company could adopt its own code, but waivers would require board approval, and must be promptly disclosed.[91] Should we propose a Form 8–K item requiring disclosure of waivers of corporate ethics or conduct rules if the self-regulatory organizations adopt similar requirements? Should we propose an item even if they do not adopt such requirements? Although such a filing may appear duplicative, if we adopt such a requirement, failure to file would subject the company to liability under the securities laws, including Section 13(a) of the Exchange Act. Would this provide for greater assurance that investors can access this information and companies would comply with the requirements?

• Should disclosure apply to a waiver for any officer or director, or a smaller group of individuals? Should disclosure apply to all waivers or are some more significant than others?

• If we propose a Form 8–K item to require disclosure regarding waivers, what should the triggering event be? Should it be the date on which the board of directors grants the waiver or some other point? Should we require disclosure only when the board approves a waiver request?

• If we propose waiver disclosure, should we require the company to describe the board's reasons for approving a waiver request?

• Should we limit disclosure to waivers of requirements regarding conflicts of interest between the company and one of its directors or executive officers?

Questions Regarding Critical Accounting Policies

• On May 10, 2002, we issued a release proposing disclosure about a company's application of its critical accounting policies.[92] We are considering whether a change in a company's critical accounting policy should be disclosed on Form 8–K. If so, what should the triggering event be? What information should we require about the change in policy?

4. Application to Foreign Private Issuers

Foreign private issuers that are subject to the periodic reporting requirements under the Exchange Act are not required to file current reports on Form 8–K. Instead, foreign private issuers furnish reports on From 6–K.[93] Form 6–K on its own does not require the disclosure of any specific information. Rather, Form 6–K requires a foreign private issuer to furnish publicly to the Commission any information:

• That the foreign private issuer makes or is required to make public pursuant to the foreign private issuer's home country law,

• That is filed or required to be filed with a stock exchange and which is made public by the stock exchange, or

• That is distributed or is required to be distributed to its security holders.

The information that is required to be furnished under Form 6–K is that information which is material with respect to an issuer and its subsidiaries. The form contains an illustrative list of matters that may be considered material. This list generally tracks the general subject matters that are contained in current Forms 8–K and 10–Q. We are not proposing to amend Form 6–K to require the disclosure of any specific information or to change the illustrative list of items.

• We solicit comment as to whether we should amend Form 6-K to require disclosure of specific information.

• Is there some information (such as, for example, a change of auditors or the filing of a bankruptcy petition) that, because of its high level of importance, should be required to be the subject of a filing on Form 6–K even if such disclosure is not required under the foreign private issuer's home country law or stock exchange rules?

• Would this type of mandatory requirement impose undue burdens on foreign companies that have chosen to

[88] For example, the Financial Executives Institute submitted a letter in response to our February 13, 2002 press release, suggesting that we adopt a rule containing a single broad principle with a few examples rather than a ''laundry list'' of items. Such a rule would require disclosure of any material event.

[89] See note 45.

[90] Recommendation No. 10 in the Draft Report of the New York Stock Exchange's Corporate Accountability and Listing Standards Committee.

[91] In a rule filing submitted to the Commission on June 11, 2002, Nasdaq proposed to expand its conflict of interest rule, Rule 4350(h). The rule currently provides that an issuer must conduct an appropriate review of all related party transactions on an ongoing basis and use its audit committee or comparable body of the board of directors to approve, rather than merely review, related party transactions (the term ''related party transactions'' has a meaning consistent with the meaning given it in Regulation S–K Item 404(a) [17 CFR 229.404(a)]). See SR–NASD–2002–75.

[92] See Release No. 33–8098 (May 10, 2002) [67 FR 35620].

[93] 17 CFR 249.306.

register their securities in the United States?

• Should we amend Form 6–K so that the list of illustrative matters which may be the subject of disclosure tracks the items proposed to be included in Form 8–K?

• Would this change provide better guidance to foreign private issuers on what information they should furnish under Form 6–K?

B. Shortened Filing Deadline for Form 8–K

The proposed amendments would require domestic issuers that are subject to the reporting requirements of Section 13(a) and Section 15(d) of the Exchange Act to file required current reports on Form 8–K within two business days of a triggering event.[94] These amendments would not affect the filing deadline for disclosures under Regulation FD, voluntary disclosures or the proposed deadlines under recently proposed Item 10 of Form 8–K.[95] This would shorten significantly the deadlines of five business days or 15 calendar days, depending on the nature of the event currently requiring a Form 8–K filing. Disclosure of all of the proposed new items also would have to be made within the two business day timeframe. We are proposing such changes given the significance of ''real time'' disclosure of these events to participants in the secondary markets.

In 1998, we solicited comment on shortening the Form 8–K deadline to five business days for most items and one business day for several key items.[96] As noted earlier, a number of commenters, including investor groups, issuers and law firms, indicated that two days may be workable at least for some items. A relatively equal number of commenters indicated that two business days would be insufficient. The proposals for which we sought comment were not exactly the same as those proposed in this release. Therefore, for many commenters, it is not possible to infer how they would have responded to a proposal of two business days for all items.

Questions Regarding Proposed Shortening of Filing Deadline

• We seek comment on the proposed two business day deadline. Is this shortened deadline reasonable? Can companies compile the required information and file a Form 8–K with regard to these items within the proposed timeframe?

• Should the deadline be longer or shorter for any or all of the existing and proposed disclosure items? Should the deadline be the same business day as the event or one business day after the event for some or all of the items? Should the deadline be longer, such as three or five business days after the event for some or all of the items? Which Form 8–K items should have a longer or shorter deadline? Why should those items have such deadlines?

• Are there particular existing or proposed Form 8–K items that are more significant than others so as to warrant a same day filing requirement? If so, which items?

• Would companies incur added costs as a result of the shorter time periods? If so, what types of costs would they incur?

• Would the quality of Form 8–K disclosure be negatively affected as a result of the shorter time period for preparing these filings?

• Should we use business or calendar days as a measure?

• We always are concerned about the effect that our rules have on small business issuers.[97] Would compliance with the two business day deadline be significantly more difficult for small business issuers? Why?

• Should the deadline for small business issuers be longer? If so, what should the deadline be? Would varying the deadlines for different issuers be confusing to the public?

• Should we exempt small business issuers from some or all of the proposed Form 8–K disclosure requirements?

C. Reorganization of Form 8–K Items

Due to the limited number of disclosure items in existing Form 8–K and the discrete nature of those items, to date, there has been no compelling need to organize them in any particular fashion. Because we propose to add a significant number of new items to the form, it seems appropriate to organize them into logical categories. Therefore, we propose to number and arrange the items under the following section headings:

Section 1—Registrant's Business and Operations
- Item 1.01—Entry into a Material Agreement
- Item 1.02 Termination of a Material Agreement
- Item 1.03 Termination or Reduction of a Business Relationship with a Customer

Section 2—Financial Information
- Item 2.01 Completion of Acquisition or Disposition of Assets
- Item 2.02 Bankruptcy or Receivership
- Item 2.03 Creation of a Direct or Contingent Financial Obligation That Is Material to the Registrant
- Item 2.04 Events Triggering a Direct or Contingent Financial Obligation That Is Material to the Registrant
- Item 2.05 Exit Activities Including Material Write-Offs and Restructuring Charges
- Item 2.06 Material Impairments

Section 3—Securities and Trading Market
- Item 3.01 Rating Agency Decisions
- Item 3.02 Notice of Delisting or Failure to Satisfy Listing Standards; Transfer of Listing
- Item 3.03 Unregistered Sales of Equity Securities
- Item 3.04 Material Modifications to Rights of Security Holders
- Item 3.05 [Currently reserved for reporting of insider transactions] [98]

Section 4—Matters Related to Accountants
- Item 4.01 Changes in Registrant's Certifying Accountant
- Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report

Section 5—Corporate Governance and Management
- Item 5.01 Changes in Control of Registrant
- Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers
- Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year
- Item 5.04 Material Events Regarding the Registrant's Employee Benefit, Retirement and Stock Ownership Plans

Section 6—Regulation FD

[94] Proposed Instruction B.2 to Form 8–K.

[95] With respect to the Regulation FD disclosure, see current Item 9 and proposed Item 6.01 of Form 8–K. We recently proposed new Item 10 to Form 8–K in Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914]. That release proposes different reporting deadlines for reports on Form 8–K related to transactions in a company's securities by its officers and directors. We do not propose to amend any aspect of the item proposed in Release No. 33–8090 in t his release, except to re-designate that item as Item 3.02 to conform to the Form 8–K numbering system proposed in this release.

[96] Release No. 33–7606A (Dec. 4, 1998) [63 FR 67174].

[97] A small business issuer is defined as a company that has revenues of less than $25,000,000, is a U.S. or Canadian issuer, is not an investment company, does not have a public float of $25,000,000 or more, and if a majority owned subsidiary, the parent corporation is also a small business issuer. See Item 10 of Regulation S–B [17 CFR 228.10].

[98] Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914]. This item may be removed from Form 8–K if, as a result of the comment process, we determine to move the disclosures proposed by that release to a separate form.

Item 6.01 Regulation FD Disclosure
Section 7—Other Events
Item 7.01 Other Events
Section 8—Financial Statements and Exhibits
Item 8.01 Financial Statements and Exhibits

We propose to renumber the items in a way that avoids re-use of former item numbers to avoid confusion about the subject of particular item numbers. Rather than solely a single digit item number, each Form 8–K item will be designated a three digit number containing a decimal point. For example, under the proposed system, an acquisition or disposition of assets, currently Item 2, would become proposed Item 2.01. Therefore, anyone searching for such filings made before and after the change would search for Item 2 and Item 2.01. The designation ''Item 2'' would not be reassigned to a new item to avoid confusion.

Questions Regarding Proposed Reorganization of Form 8–K Items

- Should we reorganize the Form 8–K items in this way? Is there a better way to reorganize the Form 8–K items?
- Is it preferable not to change the numbering and order of the existing Form 8–K items and to simply designate each of the proposed new disclosure requirements as a separate Form 8–K item without grouping them into disclosure categories?
- Would such rearrangement and the corresponding re-numbering of items be confusing to investors who research these reports? If so, what would be a viable alternative for designating the items?
- On April 12, 2002, we proposed to add a new item to Form 8–K that would require disclosure by a company of transactions by its officers and directors in the company's securities.[99] We expect a substantial number of filings as a result of that proposed item on Form 8–K. Should we create a separate form to disclose those transactions?

D. Liability Issues and the Proposed Safe Harbors

Under the proposals, information on Form 8–K would continue to be considered ''filed'' under Section 18 of the Exchange Act, except for information provided pursuant to Regulation FD under proposed Item 6.01 (currently Item 9), which is not deemed ''filed'' for purposes of Section 18. We believe that because most of the disclosures in the proposed new items relate to specific events that have occurred, providing that the information not be ''filed'' would be inappropriate. The efficiency of the securities markets relies not only on the amount and timeliness of information, but also on the quality of that information. Form 8–K items, other than the Regulation FD requirement, historically have been subject to liability under all relevant sections of the Exchange Act. By subjecting Form 8–K disclosure to the appropriate level of liability, we ensure that our rules promote the dissemination of high-quality, balanced disclosure. We do not believe that quality should be sacrificed for the sake of speed. We note, however, that to the extent that companies provide forward-looking statements, safe harbors may be available under the Exchange Act [100] and the Commission's rules.[101]

Similarly, we do not intend for these proposals, if adopted, to affect existing law regarding a determination of the materiality of information for purposes of other provisions of the securities laws, including Rule 10b–5 under the Exchange Act. The courts and the Commission have developed an extensive body of law concerning materiality standards,[102] and these proposed amendments are not intended to change any aspect of that body of law.

To accommodate companies that do not file a report in a timely manner despite making a good faith effort to file such reports, we are proposing to create a safe harbor. The proposal would add a new paragraph to each of Rule 13a–11 [103] and Rule 15d–11 [104] under the Exchange Act. The proposed new paragraphs would provide a safe harbor for a company that fails to file a required Form 8–K in a timely manner if the company satisfies all of the safe harbor's conditions. Under the proposed safe harbor, a company would not be liable under Sections 13 and 15(d) of the Exchange Act for such a failure to file if:

- On the Form 8–K due date, the company maintained sufficient procedures to provide reasonable assurances that the company is able to collect, process and disclose, within the specified time period the information required to be disclosed by Form 8–K; [105] and
- No officer, employee or agent of the company knew, or was reckless in not knowing, that a report on Form 8–K was required to be filed and once an executive officer of the company became aware of its failure to file a required Form 8–K, the company promptly (and not later than two business days after becoming aware of its failure to file) filed a Form 8–K with the Commission containing the required information and stating the date, or approximate date, on which the report should have been filed.

A company that complies with these requirements would not be liable for a violation of Section 13(a) or 15(d). This safe harbor, however, would not provide protection for violations of other provisions of the securities laws. Accordingly, the obligation to disclose information on Form 8–K would not be affected by the safe harbor and thus would continue to exist for purposes of determining liability under Section 10 and Rule 10b–5 under the Exchange Act and Sections 11, 12 and 17 of the Securities Act. In addition, this safe harbor would not apply to a company's eligibility to use short form registration statements.[106]

Although compliance with the safe harbor would shield the company from liability under Section 13 and 15(d) for a late Form 8–K filing, that filing would not be considered timely unless filed within the time period required by Form 8–K. A company that fails to file a Form 8–K in a timely manner would not be eligible to use short form registration statements. In addition, a company could not use Form S–8 and its security holders could not rely on Rule 144 unless the company was current in its Exchange Act filings, including Form 8–K. As discussed later in this release, proposed amendments to Rule 12b–25 would afford relief with regard to the timeliness of filings and short form eligibility.

Questions Regarding the Proposed Safe Harbor

- Are the requirements of the proposed safe harbor appropriate?

[99] See Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914].

[100] See Section 21E of the Exchange Act [15 U.S.C. § 78u–5].

[101] See, for example, Securities Act Rule 175 [17 CFR 230.175].

[102] See, for example, *TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438 (1976), *Basic, Inc.* v. *Levinson,* 485 U.S. 224 (1988), *SEC* v. *Texas Gulf Sulphur Co.,* 401 F.2d 833 (2d Cir. 1968).

[103] 17 CFR 240.13a–11.

[104] 17 CFR 240.15d–11.

[105] In a separate release, we recently proposed to require a company's principal executive officer and principal financial officer to certify the information included in the company's quarterly and annual reports. The release also encourages companies to establish a committee to ensure that the company maintains adequate procedures to collect, process and disclose information required to be reported in the company's annual, quarterly and current reports. See Release No. 34–46079 (June 14, 2002).

[106] This safe harbor also would not apply to new Item 10 of Form 8–K proposed in Release No. 33–8090, that if adopted, would require disclosure by a company of transactions by its officers and directors in the company's securities. See Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914]. That release provides for a separate safe harbor under that proposed item.

• Should there be additional conditions to the safe harbor that would encourage good faith compliance with the disclosure requirements? Are any of the conditions in the proposed safe harbor unnecessary?

• Is our recommendation regarding creation of a committee to ensure that the company maintains adequate disclosure procedures appropriate? Is the suggested composition of the committee appropriate? Are there better ways to ensure maintenance of adequate disclosure procedures?

• Is it appropriate to condition the availability of the safe harbor on no officer, employee or agent knowing or being reckless in not knowing that a report on Form 8–K is required? Should the safe harbor instead be based on a negligence standard?

• Should we subject all of the new Form 8–K disclosure requirements to all liability provisions? Conversely, should we extend the safe harbor to any other liability provisions, such as Rule 10b–5 under the Exchange Act or Section 11 of the Securities Act? What would the consequences be for the quality of disclosure if we expanded the safe harbor to provide more protection from liability?

• Should we permit companies to furnish, rather than file, Form 8–K for purposes of Section 18 of the Exchange Act? Are there particular items that should be furnished rather than filed?

• Should a company's short form eligibility continue to be conditioned on the company's timely filing of Form 8–K? Similarly, should we continue to condition a company's Form S–8 eligibility and resales of the company's securities under Rule 144 of the Securities Act on the currency of Exchange Act filings, including Form 8–K filings? Should companies have to file all required Forms 8–K, even if late, to effect a shelf takedown?

E. Amendments to Rule 12b–25 and Form 12b–25 Regarding Late Filing

We also propose amendments to Rule 12b–25 [107] and Form 12b–25 [108] to require a company to file a Form 12b–25 if the company will not be able to file a current report on Form 8–K in a timely manner. Currently, there is no means by which a company can file a Form 8–K late without affecting its eligibility to use short form registration statements. Under the proposal, a company would have to file the Form 12b–25 one business day after the Form 8–K is due and file the Form 8–K within two business days after the original due date. If the company makes the appropriate representations that it was not able to file in a timely manner without unreasonable effort or expense, then the report would be deemed to be filed on the prescribed due date. A company that provides proper notice on Form 12b–25 would not lose its eligibility to use short form registration statements as the result of its inability to timely file a Form 8–K unless the company fails to file within the extended period permitted by Rule 12b–25.

Questions regarding proposed Amendments to Rule 12b–25 and Form 12b–25

• Should we require companies to file a Form 12b–25 whenever they are unable to timely file a Form 8–K? Is this provision practical in light of the short timeframes involved? Instead of requiring companies to file a Form 12b–25 whenever they are unable to timely file a Form 8–K, should we permit companies to file the Form 12b–25 only when they need a two business day filing extension and reasonably expect that they will be able to file within the extended period?

• Should companies have to disclose in Form 12b–25 the reasons for their inability to timely file a Form 8–K?

• This amendment would effectively double the Form 8–K filing deadline to four business days. Should the extension period be longer or shorter than two business days? If so, what would an appropriate timeframe be?

• Should the proposed availability of Form 12b–25 apply with respect to Item 10 of Form 8–K that we proposed separately regarding disclosure of transactions by a company's officers and directors in the company's securities? [109]

• In light of our intent to make the required disclosures available to the public in a timely manner, should we provide such an extension at all?

F. Conforming Amendments

1. Amendments to Item 601 of Regulation S–B and Item 601 of Regulation S–K

In connection with the proposed new Form 8–K disclosure items, we would require companies to file some documents as exhibits that previously have not been required to be filed under Item 601 of either Regulation S–B or Regulation S–K. Therefore, we propose to add entries describing these exhibits to the Item 601 exhibit table. These new exhibit entries would include: ''letters on departure of principal officers,'' ''notice of delisting or failure to satisfy listing standards,'' and ''notice from auditor regarding validity of audit or consent.'' We also would amend the existing entry captioned, ''letters on departure of director'' to incorporate the changes proposed in this release.

We also propose amendments to Item 601 to footnote the ''8–K'' column in the Exhibit Table to clarify that a company need only file the exhibits marked in the ''8–K'' column of the table that are relevant to a particular report on Form 8–K. If a company previously has submitted an exhibit with another filing, it may incorporate that exhibit by reference into the Form 8–K report.

Finally, we propose to make a corrective amendment to eliminate the reference in Item 601 to submission of Financial Data Schedules.[110] We eliminated the requirement to file a Financial Data Schedule on May 30, 2000.[111]

2. Elimination of Items in Forms 10–Q, 10–QSB, 10–K and 10–KSB

We propose to eliminate several items in Forms 10–Q, 10–QSB, 10–K and 10–KSB. The disclosures called for in these items no longer would be required in quarterly and annual reports because they already would have been more promptly reported on Form 8–K. We propose to eliminate the following items in Part II of Forms 10–Q and 10–QSB:

(a) Paragraphs (a) through (c) of Item 2, Changes in Securities and Use of Proceeds;

(b) Item 3, Defaults upon Senior Securities;

(c) Item 5, Other Information; and

(d) Paragraph (b) of Item 6, Exhibits and Reports on Form 8–K.

We are also proposing to make the following changes to Form 10–K:

(a) Revise paragraph (a) of Item 5, Market for Registrant's Common Equity and Related Stockholder Matters;

(b) Delete Item 9, Changes in and Disagreements With Accountants on Accounting and Financial Disclosure; and

(c) Delete paragraph (b) of Item 14, Exhibits, Financial Statement Schedules, and Reports on Form 8–K.

We propose to make the following changes to Form 10–KSB:

(a) Revise paragraph (a) of Item 5, Market for Registrant's Common Equity and Related Stockholder Matters;

(b) Delete Item 8, Changes in and Disagreements With Accountants on

[107] 17 CFR 240.12b–25.

[108] 17 CFR 249.322.

[109] See Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914].

[110] See current Item 601(a)(1) of Regulation S–B and S–K [17 CFR 228.601(a)(1) and 229.601(a)(1)].

[111] Release No. 33–7855 (Apr. 24, 2002) [65 FR 24788].

Accounting and Financial Disclosure; and

(c) Delete paragraph (b) of Item 14, Exhibits and Reports on Form 8–K.

Questions Regarding the Proposed Elimination of Items From Annual and Quarterly Reports

- Is there any reason to keep any of these items in Forms 10–Q, 10–QSB, 10–K and 10–KSB?
- Would it be helpful for investors to have companies provide a list of the current reports on Form 8–K that it filed during the reported quarter or fiscal year?

3. Other Proposed Conforming Amendments

We also propose amendments to Item 10 of Regulation S–B and Regulation S–K.[112] This item currently encourages companies to report material changes in credit ratings on Form 8–K. The proposals would make such disclosure mandatory. Therefore, if we adopt the proposals, this provision no longer would be necessary.

In addition, we propose to amend Item 701 of Regulation S–B and Regulation S–K.[113] These items currently refer to disclosure of unregistered sales of securities in current reports, as well as annual and quarterly reports. We propose to move this disclosure out of the annual and quarterly reports. If we adopt these proposals, the references to Forms 10–QSB, 10–Q, 10–KSB and 10–K in this item no longer would be necessary.

Finally, we propose to amend the note at the end of Rule 15d–10 regarding transition reports.[114] The current note refers to Item 8 of Form 8–K. If the proposals are adopted, this item would be re-designated as Item 5.03. Therefore, we propose to conform this reference accordingly.

G. General Request for Comment

We request and encourage any interested person to submit comments regarding:

(1) The proposed changes that are the subject of this release,

(2) Additional or different changes, or

(3) Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of registrants, investors and other users of information about the resale of restricted securities and securities owned by affiliates of the issuer. With regard to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

III. Paperwork Reduction Act

Exchange Act Form 8–K, Form 12b–25, Form 10–K, Form 10–KSB, Form 10–Q, Form 10–QSB and Regulations S–K and Regulation S–B contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[115] We are submitting a request for approval of the proposed revisions to these requirements to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. 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.

Form 8–K

Form 8–K (OMB Control No. 3235–0060) prescribes information, such as material events or corporate changes, that a registrant must disclose. Form 8–K also may be used, at a registrant's option, to report any events that the registrant deems to be of importance to shareholders. Companies also may use the form to disclose the nonpublic information required to be disclosed by Regulation FD.[116]

We currently estimate that Form 8–K results in a total annual compliance burden of 528,300 hours and an annual cost of $71,477,000. We estimate the number of Form 8–K filers to be 13,200, based on the actual number of Form 10–K and 10–KSB filers during the 2001 fiscal year. For purposes of this analysis, we estimate that the number of reports on Form 8–K filed is 250,600.[117] We estimate that each entity spends, on average, approximately 5 hours completing the form. We estimate that 75% of the burden is prepared by the company and that 25% of the burden is prepared by outside counsel retained by the company at an average cost of $300 per hour. The staff estimated the average number of hours each entity spends completing the form, and the average hourly rate for outside securities counsel, by contacting a number of law firms and other persons regularly involved in completing the forms.

Under the proposals, 11 new disclosure items would be added to Form 8–K, two disclosure items would be moved from annual and quarterly reports to Form 8–K, two existing disclosure items would be substantially expanded, and all Form 8–K reports would be due no later than the second business day following the occurrence of events requiring disclosure. We believe that the proposed revisions are necessary to provide ''real time'' disclosure of significant corporate events to participants in the secondary trading markets and to bolster investor confidence in the securities markets.

We estimate that, on average, completing and filing a Form 8–K if the proposed new disclosure items are adopted would require the same amount of time currently spent by entities completing the form—approximately 5 hours. To determine the expected increase in the number of current reports on Form 8–K if the proposals are adopted, we reviewed two of the new proposed items: (1) Unregistered sales of equity securities and (2) movement or delisting of a company's securities. These were the only two proposed items for which we were able to obtain reliable data regarding both the number of events reported on Form 8–K as well as the number of events that actually occurred.

First, we obtained a sample of 85 unregistered sales of equity securities by publicly traded companies. Fifty-three, or 62%, of these were reported voluntarily on Form 8–K. Next, we obtained a sample of 333 companies that changed their primary trading markets or were delisted from an exchange or quotation system.[118] Ninety, or 27%, of these reported the event voluntarily on Form 8–K.

Then, we examined the extent to which the proposed events already are being filed under Item 5 of Form 8–K. In fiscal year 2001, companies filed 22,332 current reports on Form 8–K under Item 5, Other Events. We surveyed 220 of these reports and determined that 96 of them, or 43.6%, would be required, rather than voluntary, disclosures if the proposals are adopted. Based on this survey, we estimate that 43.6%, or 9737, of the voluntary Form 8–Ks filed in 2001 would become mandatory filings under the proposals.

Using the percentages of voluntarily reported unregistered sales of equity

[112] 17 CFR 228.10 and 229.10.

[113] 17 CFR 228.701 and 229.701.

[114] 17 CFR 240.15d–10.

[115] 44 U.S.C. 3501 *et seq.*

[116] 17 CFR 243.100–103.

[117] This number assumes adoption of the proposals in Release No. 33–8090 (April 12, 2002) [67 FR 19914]. If adopted, those proposals would cause companies to file estimated additional 215,500 Form 8–K reports each year.

[118] Data regarding voluntary changes of trading markets was obtained from a search of Dow Jones New Retrieval. Data regarding delisting of companies was obtained from CRSP, Center for Research in Securities Prices, data published by the University of Chicago.

securities and movements or delisting from exchanges and quotation systems, we assume that between 27% and 62% of events covered by the proposed disclosure items already are being voluntarily disclosed.

To obtain the total expected increase in filings, we first divide the number of reports on Form 8–K currently being filed voluntarily that would be required reporting events under our proposal by the rate at which companies currently are reporting these events on a voluntary basis.

Based on unregistered sales: 9,737/0.62 = 15,705

Based on movements/delistings: 9,737/0.27 = 36,063

We then subtract the number of events under the proposal that currently are being reported voluntarily from the total number filings expected to be required under the proposal.

Based on unregistered sales: 15,705 − 9,737 = 5,968

Based on movements/delistings: 36,063 − 9,737 = 26,326

This is the number of additional filings that we expect as a result of the proposed items. Choosing the higher estimate of roughly 26,400 additional filings per year, we estimate that, on average, we expect a company to file two additional reports on Form 8–K per year. Based on 26,400 additional filings per year, we estimate that the total number of annual Form 8–K filings would be 277,000. The additional filings would result in an added annual burden of 99,000 hours (26,400 × 5 × .75 = 99,000) and a total annual burden of 627,300 hours (528,300 + 99,000 = 627,300). We estimate that, if the proposals are adopted, the additional filings would result in an added annual cost of $9,900,000 (26,400 × 5 × .25 × $300 = $9,900,000) and a total annual cost to issuers of $81,377,000 ($71,477,000 + $9,900,000 = $81,377,000).

Form 12b–25.

Form 12b–25 (OMB Control No. 3235–0058) was adopted pursuant to Sections 13, 15, and 23 of the Exchange Act. Form 12b–25 provides notice to the Commission and the marketplace that a public company will be unable to file a required report in a timely manner. If certain conditions are met, the company will be granted an automatic filing extension.

We currently estimate that Form 12b–25 results in a total annual compliance burden of 15,000 hours and an annual cost of $0.[119] We estimate the number of Form 12b–25 filers to be 6,000, based on the fact that we received approximately 6,000 Form 12b–25 filings in the last fiscal year. We estimate that each entity spends, on average, approximately 2.5 hours completing the form. We estimate that 100% of the burden is prepared by the company. The staff estimated the average number of hours each entity spends completing the form, and the average hourly rate for outside securities counsel, by contacting a number of law firms and other persons regularly involved in completing the forms.

The proposed rules would require a company that is not able to timely file a Form 8–K to report this late filing on Form 12b–25. Based on a review of 271 Form 8–K filings, we determined that 31, or 11%, of those were filed late. Based on this percentage, we estimate that of the expected 61,500[120] filings for which Form 12b–25 would be available, 6,700 would be late, resulting in an added burden of 16,750 hours and a total burden of 31,750 hours. This number is based on the current rate of late filings. We have no basis for estimating the number of additional filings that may be late as a result of the shortened deadline. However, we believe that companies that implement the procedures necessary to qualify for the proposed safe harbors would be file Form 8–K in a timely manner. In fact, based on a review of Form 8–K reports, 25,500 out of 35,500 filings, or 72%, were filed in two calendar days or less. We believe a greater emphasis on these reports and the improved procedures may cause a decrease in late Form 8–K filings.

Forms 10–K, 10–KSB, 10–Q, 10–QSB

Form 10–K (OMB Control No. 3235–0063) prescribes information that a registrant must disclose annually to the market about its business. Form 10–KSB (OMB Control No. 3235–0420) prescribes information that a registrant that is a ''small business issuer'' as defined under our rules must disclose annually to the market about its business.

Form 10–Q (OMB Control No. 3235–0070) prescribes information that a registrant must disclose quarterly to the market about its business. Form 10–QSB (OMB Control No. 3235–0416) prescribes information that a registrant that is a ''small business issuer'' as defined under our rules must disclose quarterly to the market about its business.

We are proposing to eliminate several disclosure requirements from these forms and move those requirements to Form 8–K. Because these items are extraordinary events, companies are not always required to make disclosure about these events in their annual and quarterly reports. Therefore, we expect the decrease in overall burden to be minimal. We estimate that these changes would result in a decrease of one burden hour per company per filing in connection with preparing and filing each quarterly report on Form 10–Q and 10–QSB and the annual report on Form 10–K or 10–KSB.

Based on a burden hour estimate of four hours per respondent per year,[121] we estimate that, in the aggregate, the changes would result in a savings of 52,800 burden hours[122] to comply with the proposed rules. The total burden hours of complying with Form 10–Q and Form 10–QSB, revised to include the burden hours expected to be eliminated as a result of the proposed rules, is estimated to be 3,134,563 hours for Form 10–Q, a decrease of 28,152 hours[123] from the current annual burden of 3,162,715 hours, and 1,291,631 hours for Form 10–QSB, a decrease of 11,367 hours[124] from the current annual burden of 1,302,998 hours. The total burden hours of complying with Form 10–K and Form 10–KSB, revised to include the burden hours expected to be eliminated as a result of the proposed rules, is estimated to be 12,346,998 hours for Form 10–K, a decrease of 9,384 hours[125] from the current annual burden of 12,356,382 hours, and 3,420,520 hours for Form 10–KSB, a decrease of 3,789 hours[126] from the current annual burden of 3,443,254 hours.

Item 601 of Regulation S–K and Item 601 of Regulation S–B

Item 601 of Regulation S–K (OMB Control No. 3235–0071) prescribes the exhibits that a registrant must provide in filings under the Securities Act and the Exchange Act. Item 601 of Regulation S–B (OMB Control No. 3235–0417) prescribes the exhibits that a registrant that is a ''small business

[119] We do not estimate a separate annual cost for Form 12b–125 because we estimate that the company prepares the disclosure itself without the assistance of outside counsel.

[120] 250,600 current estimate of Form 8–K filings—215,500 to which these provisions will not apply (proposed Item 10 (or Item 3.05) reports) + 26,400 expected increase due to these proposals = 61,500 reports.

[121] Three quarterly reports and one annual report × one hour each = 4 hours.

[122] 13,200 companies × four hours = 52,800 hours.

[123] 26,746 quarterly reports × one hour = 28,152 hours.

[124] 11,367 quarterly reports × one hour = 11,367 hours.

[125] 9,384 annual reports × one hour = 9,384 hours.

[126] 3,789 annual reports × one hours = 3,789 hours.

issuer'' as defined under our rules must provide in filings under the Securities Act and the Exchange Act.

The proposed changes to these items would amend the exhibit tables to identify exhibits that must be filed with Form 8–K. We have incorporated the burden of actual submitting those exhibits in the estimate of the burden to file Form 8–K. These items do not, separate from the form, require any additional filing and therefore do not add to the burden on companies. Therefore, we do not expect any change in the total annual burden of reporting under these items. We assign one burden hour and no cost to Regulations S–B and S–K for administrative convenience to reflect the fact that these regulations do not impose any direct burden on companies.

Compliance with the revised disclosure requirements would be mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements would not be kept confidential.

Pursuant to 44 U.S.C. 3506(c)(2)(B), we solicit comments to: (i) 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; (ii) evaluate the accuracy of our estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–22–02. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–22–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

IV. Costs and Benefits

Recent developments in the securities markets have highlighted the need for companies to provide more timely disclosure of material events that affect them. The amendments proposed in this release seek to increase the amount of timely information that companies disclose publicly. Currently, Form 8–K requires that registrants disclose six enumerated events within five business days or 15 calendar days, depending on the event. We are proposing to decrease this filing deadline to two business days after the event occurs for all events, other than proposed Item 7.01 which has no deadline and proposed Item 6.01 (current Item 9) relating to Regulation FD disclosures. We are also proposing to add 11 new events that would trigger a Form 8–K filing requirement, move two items in Forms 10–Q, 10–QSB, 10–K, and 10–KSB to Form 8–K, and expand two existing items in Form 8–K. Finally, we are proposing to reorganize the Form 8–K items, create a safe harbor for unintentional violations of the Form 8–K filing requirements and create an automatic two business day extension of the filing deadline to companies providing proper notification. These changes will affect all companies reporting under Section 13(a) and 15(d) of the Exchange Act.

A. Benefits

In combination, the proposed shortening of the Form 8–K filing deadline and increase in Form 8–K disclosure items would provide the securities markets with more information about companies in a more timely manner. By increasing the timeliness and the amount of information available, we expect the amendments to Form 8–K to enable the market to more accurately and quickly price securities.

B. Costs

Although we expect that the proposed shortening of the filing deadline from five business days or 15 calendar days to two business days would increase to some extent the cost of filing a Form 8–K, we do not have data regarding the amount of that incremental cost increase. However, we did review approximately 35,500 Form 8–K filings. Of these, approximately 25,500 reports, or 72%, were filed within two calendar days of the reported event date. Similarly, of approximately 23,500 filings made under current Item 5 of Form 8–K, approximately 11,500 reports, or 49%, were filed within two calendar days of the reported event date. Although this review did not investigate whether filers reported the correct event date for each filing, it appears that many, if not most, companies are already filing their Form 8–K reports well before the current deadlines. Therefore, the reduction in the Form 8–K deadline should add little extra burden on these filers.

Similarly, we expect that the addition of new Form 8–K items would increase the number of Forms 8–K that a company would make. Based on our estimates for purposes of the Paperwork Reduction Act, we expect approximately two additional filings per year per company if the proposals are adopted. This will cause a corresponding increase in filing costs.

We are proposing a safe harbor for unintentional violations and a mechanism for obtaining an automatic two business day extension to help alleviate these costs. We are also eliminating any duplicative reporting requirements in annual and quarterly reports. In addition, developments such as EDGARLink that enable a company to file reports easily and directly, without the added costs of using third parties to submit filings, with the Commission over the Internet,[127] and the industry's increased experience over the past several years using the EDGAR system should minimize companies' cost of filing more Form 8–K reports in a shorter timeframe.

We request comment on issues related to this cost-benefit analysis. In particular, are there any other costs that would be associated with either the shortening of the Form 8–K filing deadline or the increase in Form 8–K items? What would be the incremental added cost associated with filing Form 8–K reports within two business days instead of the current five business days or 15 calendar days? What would be the increase in cost as a result of the increased number of Form 8–K items? Are some new items more costly to report than others? How many more Form 8–K reports would a registrant expect to file within the course of a year if we adopt the proposed new Form 8–K items? Are companies in particular industries or of particular size likely to file more reports than others? Please provide any quantitative data on which you rely in formulating your comments.

[127] EDGARLink is downloadable free of charge to filers from our website at *http://www.edgarfiling.sec.gov*.

Would maintaining the current level of liability to which Form 8–K is subject add to companies' costs in light of the new disclosures that they would have to make? What data is available to support any predicted increase in costs? To the extent that a reduction in the level of liability would mitigate the cost of providing more information in a more timely manner, should we consider reducing liability for Form 8–K disclosures? Would a reduction in liability negatively affect the quality of the information reported?

V. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) [128] of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed amendments are intended to improve the amount and timeliness of current information available to investors and the financial markets. We anticipate that these proposals would enhance the proper functioning of the capital markets. This increases the competitiveness of companies participating in the U.S. capital markets. However, because only companies subject to the reporting requirements of Sections 13 and 15 of the Exchange Act would be required to make the disclosures in this proposal, competitors not subject to those reporting requirements potentially could gain an informational advantage. If the proposal to shorten filing deadlines increases the number of companies who file their reports late, this could reduce the number of companies eligible for short-form and delayed shelf registration.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 2(b) [129] of the Securities Act and Section 3(f) [130] of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The proposed amendments would enhance our reporting requirements. The purpose of the amendments is to increase the amount and the timeliness of important information disclosed to investors. This should improve investors' ability to make informed investment and voting decisions. Informed investor decisions generally promote market efficiency and capital formation. As noted above, however, the proposals could have certain indirect consequences, such as precluding some companies from using short-form registration if they fail to comply with the abbreviated filing deadlines, which could adversely impact their ability to raise capital. The possibility of these effects and their magnitude if they were to occur are difficult to quantify.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to Exchange Act Form 8–K.

A. Reasons for the Proposed Action

Exchange Act Form 8–K is used by companies for current reports under Section 13 or 15(d) of the Exchange Act that are filed pursuant to Exchange Act Rule 13a–11 or 15d–11, and for reports of nonpublic information required to be disclosed by Regulation FD. Currently, a company subject to these requirements must file a Form 8–K upon the occurrence of one or more of the following events:

- Change in control of the company
- Company's acquisition or disposition of a significant amount of assets, not in the ordinary course of business
- Bankruptcy or receivership
- Change in the company's certifying accountant
- Resignation of a director
- Change in the company's fiscal year

Most Form 8–K reports must be filed within 15 calendar days after occurrence of the event to which the report relates, although reports concerning changes in the company's certifying accountant and resignation of directors are due within five business days after their occurrence. Companies also may use Form 8–K, at their option, to report events that the company deems important to shareholders. Additionally, a company may use the form to satisfy its Regulation FD disclosure requirements.[131] We believe that investors and the securities markets need more timely access to a greater range of information concerning significant corporate events than currently required by Form 8–K. The proposed revisions to Form 8–K would: (1) significantly increase the list of events that trigger a Form 8–K filing requirement; and (2) require most Form 8–K reports to be filed no later than the second business day following occurrence of the event to which the report relates.[132]

B. Objectives

The proposals would enhance investor confidence in the fairness and integrity of the securities markets by requiring companies to provide more current disclosure about several significant corporate events. In addition to accelerating the filing deadlines for events that already trigger the Form 8–K filing requirements, the proposals would expand the types of information covered by Form 8–K to include:

- Entry into a material agreement not made in the ordinary course of business;
- Termination of a material agreement not made in the ordinary course of business;
- Termination or reduction of business relationship with a customer;
- Creation of any direct or contingent financial obligation that is material to the company;
- Events triggering a direct or contingent financial obligation that is material to the company;
- Exit activities including material write-offs and restructuring charges;
- Any material impairment;
- A change in a rating agency decision, issuance of a credit watch or change in a company outlook;
- Movement of the company's securities from one exchange or quotation system to another, delisting of the company's securities from an exchange or quotation system, or a notice that a company does not comply with a listing standard;
- Conclusion or notice that security holders no longer should rely on the

[128] 15 U.S.C. 78w(a)(2).

[129] 15 U.S.C. 77b(b).

[130] 15 U.S.C. 78c(f).

[132] Form 8–K is not the exclusive means by which a company can comply with the requirements of Regulation FD. Alternatively, a company may comply with Regulation FD by disclosing the information through another method or combination of methods that is reasonably designed to effect broad, non-exclusionary distribution of the information to the public.

[133] Filings under current Item 5 for volunatary reporting have no deadline, while submissions under current Item 9 for Regulation FD disclosures are filed based on the requirements of Regulation FD.

company's previously issued financial statements or a related audit report; and

• Any material limitation, restriction, or prohibition, including the beginning and end of lock-out periods, regarding the company's employee benefit, retirement and stock ownership plans.

We also are proposing to move the following items from other Exchange Act reports to Form 8–K:

• Unregistered sales of equity securities by the company; and

• Material modifications to rights of the company's security holders.

Finally, we are proposing to expand the current Form 8–K item that requires disclosure about the resignation of a director to also require disclosure regarding the appointment or departure of a company's principal officers and newly elected directors. We would also combine the current Form 8–K item regarding changes in fiscal years with a requirement to disclose material amendments in a corporation's articles or bylaws. We believe that these proposals would provide for faster and more effective disclosure of important information by issuers to the investing public.

C. Legal Basis

We are proposing the amendments to Form 8–K under the authority set forth in Sections 7, 10 and 19 of the Securities Act and Sections 12, 13, 15, 23, and 36 of the Exchange Act.

D. Small Entities Subject to the Proposed Revisions

The proposed changes to Form 8–K would affect issuers that are small entities. Exchange Act Rule 0–10(a)[133] defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. As of February 20, 2002, we estimated that there were approximately 2,500 issuers, other than investment companies, that may be considered small entities. The proposed revisions to Form 8–K would apply to any small entity that is subject to Exchange Act reporting requirements.

E. Reporting, Recordkeeping, And Other Compliance Requirements

Form 8–K currently consists of nine disclosure items. The amendments would add 13 new disclosure items, including those being moved from annual and quarterly reports, and substantially expand two existing items. All small entities that are subject to the reporting requirements of 13(a) or 15(d) of the Exchange Act would be subject to these amendments. Because reporting companies already file Form 8–K for some events, no additional professional skills beyond those currently possessed by these filers would be necessary to prepare the form for the proposed new types of events. We expect that reporting of these new disclosure items would increase costs incurred by small entities because they would have to file Form 8–K more frequently. We have calculated for purposes of the Paperwork Reduction Act that each filer, including small entities, would be subject to an added annual reporting burden of approximately 3.75 hours and an estimated annual average cost of $3,375 for disclosure assistance from outside counsel as a result of the amendments.

F. Duplicative, Overlapping, or Conflicting Federal Rules

The proposed Form 8–K disclosure would not duplicate, overlap, or conflict with other federal rules. Companies file Form 8–K to report significant events that occur between other required Exchange Act filings. Although limited Form 8–K disclosure and some exhibits attached to Form 8–K may have to be included as part of subsequent annual or quarterly reports filed by the company, most Form 8–K disclosure does not have to be repeated in another filing. We are proposing to eliminate from the annual and quarterly reports the items that we are proposing to move to Form 8–K. There are no other requirements that companies file or provide similar information at the time the events triggering Form 8–K occur.

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entity issuers. In connection with the proposed revisions to Form 8–K, we considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of Form 8–K reporting requirements for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the Form 8–K requirements, or any part thereof, for small entities.

We believe that different compliance or reporting requirements or timetables for small entities would interfere with achieving the primary goal of making information about significant corporate events promptly available to investors and the public securities markets. We do, however, solicit comment on whether small business issuers, which is a broader category of issuers than small entities,[134] should be subject to fewer Form 8–K disclosure requirements than other issuers. We also solicit comment as to whether small business issuers should be subject to longer Form 8–K filing deadlines. Although we generally believe that an exemption for small entities from coverage of the proposed revisions is not appropriate, we solicit comment on the propriety of a complete exemption from the requirements for small business issuers. We also think that the current and proposed Form 8–K disclosure requirements are clear and straightforward. They generally require brief disclosure indicating that a specific significant corporate event has occurred. Therefore, it does not seem necessary to develop separate requirements for small entities. We have used design rather than performance standards in connection with the proposed Form 8–K revisions because we want this disclosure to appear in a specific type of disclosure filing so that investors will know where to find information about specific significant corporate events and that the form is comparable between large and small issuers. We also want the information to be filed electronically with us using the EDGAR filing system. We do not believe that performance standards for small entities would be consistent with the purpose of the proposed revisions.

H. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding: (i) The number of small entity issuers that may be affected by the proposed revisions; (ii) the existence or nature of the potential impact of the proposed revisions on small entity issuers discussed in the analysis; and (iii) how to quantify the impact of the proposed revisions. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of

[133] 17 CFR 240.0–10(a).

[134] Item 10 of Regulation S–B (17 CFR 228.10) defines a small business issuer as a company that has revenues of less than $25 million, is a U.S. or Canadian issuer, is not an investment company, and has a public float of less than $25 million. Also, if it is a majority owned subsidiary, the parent corporation also must be a small business issuer. Rule 0–10 of the Exchange Act (17 CFR 240.10) defines a small entity for purposes of the Regulatory Flexibility Act as a company that, on the last day of its most recent fiscal year, had total assets of $5 million or less.

the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed revisions are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[135] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

Commenters should provide empirical data on (a) the annual effect on the economy; (b) any increase in costs or prices for consumers or individual industries; and (c) any effect on competition, investment or innovation. We request your comments on the reasonableness of this estimate.

VIII. Statutory Basis

We are proposing the amendments to Securities Exchange Act Form 8–K pursuant to Sections 7, 10 and 19 of the Securities Act, as amended, and Sections 12, 13, 15 and 23 of the Securities Exchange Act, as amended.

Text of the Proposed Amendments

List of Subjects in 17 CFR Parts 228, 229, 240 and 249

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons set out above, we propose to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

§ 228.10 [Amended]

2. Amend § 228.10 by removing paragraph (e)(1)(iii).

3. Amend § 228.601 by:

a. Revising paragraph (a)(1);

b. Adding new footnote ''*****'' to the caption ''Exchange Act Forms'' ''8–K'' in the Exhibit Table;

c. Revising exhibit titles (6), (7) and (17) in the Exhibit Table;

d. Removing ''N/A'' corresponding to exhibit titles (6) and (7) under all captions in the Exhibit Table;

e. Adding an ''X'' corresponding to exhibit items (3), (6), (7) and (10), under the caption ''Exchange Act Forms'' ''8–K'' in the Exhibit Table; and

f. Revising paragraphs (b)(6), (b)(7), and (b)(17).

The revisions and additions read as follows:

§ 228.601 (Item 601) Exhibits.

(a) *Exhibits and index of exhibits.* (1) The exhibits required by the exhibit table generally must be filed or incorporated by reference.

* * * * *

Exhibit Table

* * * * *

(6) Notice of delisting or failure to satisfy listing standards

(7) Notice or letter on validity of audit or consent

* * * * *

(17) Letter on departure of director

* * * * *

* * *A Form 8–K (§ 249.308 of this chapter) exhibit is required only if relevant to the subject matter of the Form 8–K. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

(b) *Description of exhibits.* * * *

(6) *Notice of delisting or failure to satisfy listing standards.* Any written notice from a national securities exchange or national securities association that a class of securities of the small business issuer which is listed on the exchange or quoted in an inter-dealer quotation system of the national securities association does not satisfy a listing standard of, or has been delisted from, the exchange or association.

(7) *Notice or letter on validity of audit or consent.* Any written notice from the small business issuer's current or previously engaged independent accountant that the independent accountant is withdrawing a previously issued audit report or that the small business issuer no longer may rely on a previously issued audit report covering one or more years for which the small business issuer is required to provide audited financial statements under Regulation S–X (part 210 of this chapter), and any letter from the independent accountant to the Commission stating whether the independent accountant agrees with the statements made by the small business issuer describing the events giving rise to the notice.

* * * * *

(17) *Letter on departure of director.* Any written correspondence from a former director concerning the circumstances surrounding the former director's resignation, declination to stand for re-election, or removal, including a letter from the former director to the Commission stating whether the former director agrees with statements made by the small business issuer describing the former director's departure.

* * * * *

4. Amend § 228.701 to revise paragraph (e) to read as follows:

§ 228.701 (Item 701) Recent sales of unregistered securities; use of proceeds from registered securities.

* * * * *

(e) If the information called for by this paragraph (e) is being presented on Form 8–K (§ 249.308 of this chapter) under the Exchange Act, and where the securities sold by the registrant are convertible or exchangeable into equity securities, or are warrants or options representing equity securities, disclose the terms of conversion or exercise of the securities.

* * * * *

PART 229—Standard Instructions for Filing Forms Under Securities Act of 1933, Securities Exchange Act of 1934 and Energy Policy and Conservation Act of 1975—Regulation S–K

5. The authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a) and 80b–11, unless otherwise noted.

* * * * *

§ 229.10 [Amended]

6. Amend § 229.10 by redesignating paragraph (c)(2)(i) as paragraph (c)(2) and by removing paragraph (c)(2)(ii).

7. Amend § 229.601 by:

a. Revising paragraph (a)(1);

b. Adding new footnote 5 to the caption ''Exchange Act Forms'' ''8–K'' in the Exhibit Table;

d. Removing the ''reserved'' designation for exhibits (6) and (7) and adding titles to exhibits (6) and (7) in the Exhibit Table;

[135] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

e. Removing ''N/A'' corresponding to exhibit titles (6) and (7) under all captions in the table;

f. Adding an ''X'' corresponding to exhibit items (3), (6), (7) and (10) under the caption ''Exchange Act Forms'' ''8–K'' in the Exhibit Table;

g. Revising exhibit title (17) in the Exhibit Table;

h. Adding the text of paragraphs (b)(6) and (b)(7); and

h. Revising paragraph (b)(17).

The revisions and additions read as follows:

§ 229.601 (Item 601) Exhibits.

(a) *Exhibits and index required.* (1) Subject to Rule 411(c) (§ 230.411(c) of this chapter) under the Securities Act and Rule 12b–32 (§ 240.12b–32 of this chapter) under the Exchange Act regarding incorporation of exhibits by reference, the exhibits required in the exhibit table shall be filed as indicated, as part of the registration statement or report.

* * * * *

Exhibit Table

* * * * *

(6) Notice of delisting or failure to satisfy listing standards

(7) Notice or letter on validity of audit or consent

* * * * *

(17) Letter on departure of director

* * * * *

5. *Form 8–K Exhibits.* A Form 8–K (§ 249.308 of this chapter) exhibit is required only if relevant to the subject matter of the Form 8–K. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

(b) *Description of exhibits.* * * *

(6) *Notice of delisting or failure to satisfy listing standards.* Any written notice from a national securities exchange or national securities association that a class of securities of the registrant which is listed on the exchange or quoted in an inter-dealer quotation system of the national securities association does not satisfy a listing standard of, or has been delisted from, the exchange or association.

(7) *Notice or letter on validity of audit or consent.* Any written notice from the registrant's current or previously engaged independent accountant that the independent accountant is withdrawing a previously issued audit report or that the registrant no longer may rely on a previously issued audit report covering one or more years for which the registrant is required to provide audited financial statements under Regulation S–X (part 210 of this chapter), including any letter from the independent accountant to the Commission stating whether the independent accountant agrees with the statements made by the registrant describing the events giving rise to the notice.

* * * * *

(17) *Letter on departure of director.* Any written correspondence from a former director concerning the circumstances surrounding the former director's resignation, declination to stand for re-election, or removal, including a letter from the former director to the Commission stating whether the former director agrees with statements made by the registrant describing the former director's departure.

* * * * *

8. Amend § 229.701 to revise paragraph (e) to read as follows:

§ 229.701 (Item 701) Recent sales of unregistered securities; use of proceeds from registered securities.

* * * * *

(e) *Terms of conversion or exercise.* If the information called for by this paragraph (e) is being presented on Form 8–K (§ 249.308 of this chapter) under the Exchange Act, and where the securities sold by the registrant are convertible or exchangeable into equity securities, or are warrants or options representing equity securities, disclose the terms of conversion or exercise of the securities.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

10. Amend § 240.12b–25 by revising the heading and paragraphs (a) and (b)(2)(ii) to read as follows:

§ 240.12b–25 Notification of inability to timely file all or any required portion of a Form 10–K, 10–KSB, 20–F, 11–K, N–SAR, Form 10–Q, Form 10–QSB or Form 8–K.

(a) If all or any required portion of an annual or transition report on Form 10–K, 10–KSB, 20–F, 11–K, or a quarterly or transition report on Form 10–Q or 10–QSB, or a current report on Form 8–K required to be filed pursuant to sections 13 or 15(d) of the Act and rules thereunder, or if all or any portion of a semi-annual, annual or transition report on Form N–SAR required to be filed pursuant to section 30 of the Investment Company Act of 1940 and the rules thereunder is not filed within the time period prescribed for such report, the registrant, no later than one business day after the due date for such report, shall file a Form 12b–25 (17 CFR 249.322) with the Commission which shall contain disclosure of its inability to file the report timely and the reasons therefor in reasonable detail.

(b) * * *

(1) * * *

(2) * * *

(i) * * *

(ii) The subject annual report, semi-annual report or transition report on Form 10–K, 10–KSB, 20–F, 11–K or N–SAR, or portion thereof, will be filed no later than the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10–Q or 10–QSB, or portion thereof, will be filed no later than the fifth calendar day following the prescribed due date; or the subject current report on Form 8–K, or portion thereof, will be filed no later than the second business day following the prescribed due date and, in the case of Form 8–K, specifying the Item number or numbers to be included in the filing; and

* * * * *

11. Amend § 240.13a–11 by adding new paragraph (c) and a new note to read as follows:

§ 240.13a–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(c) A registrant that fails to file a Form 8–K that is required to be filed shall not be liable under Sections 13 and 15(d) of the Exchange Act for the failure to file in a timely manner if all of the following conditions are satisfied:

(1) On the Form 8–K due date, the company maintained sufficient procedures to provide reasonable assurances that the registrant is able to collect process and disclose, within the specified time period, the information required to be disclosed by Form 8–K; and

(2) No officer, employee or agent of the registrant knew, or was reckless in not knowing, that a report on Form 8–K was required to be filed and once an executive officer of the registrant became aware of its failure to file a required Form 8–K, it promptly (and not later than two business days after

becoming aware of its failure to file) filed a Form 8–K with the Commission containing the required information and stating the date, or approximate date, on which the report should have been filed.

Note: This rule does not have any effect on a registrant's liability under any other provision of the securities laws, including without limitation Rule 10b–5 (§ 240.10b–5 of this chapter) under the Exchange Act and Section 11 of the Securities Act. This rule does not apply to Item 3.05 of Form 8–K.

12. Amend § 240.15d–10 by revising the note after paragraph (i) to read as follows:

§ 240.15d–10 Transition Reports.

* * * * *

(i) * * *

Note: In addition to the report or reports required to be filed pursuant to this section, every issuer, except a foreign private issuer or an investment company required to file reports pursuant to Rule 30b1–1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8–K responding to Item 5.03 thereof within the period specified in General Instruction B.1. to that form.

13. By amending § 240.15d–11 by adding new paragraph (c) and a new note to read as follows:

§ 240.15d–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(c) A registrant that fails to file a Form 8–K that is required to be filed shall not be liable under Sections 13 and 15(d) of the Exchange Act for the failure to file in a timely manner if all of the following conditions are satisfied:

(i) On the Form 8–K due date, the company maintained sufficient procedures to provide reasonable assurances that the registrant is able to collect, process and disclose, within the specified time period, the information required to be disclosed by Form 8–K; and

(ii) No officer, employee or agent of the registrant knew, or was reckless in not knowing, that a report on Form 8–K was required to be filed and once an executive officer of the registrant became aware of its failure to file a required Form 8–K, it promptly (and not later than two business days after becoming aware of its failure to file) filed a Form 8–K with the Commission containing the required information and stating the date, or approximate date, on which the report should have been filed.

Note: This rule does not have any effect on a registrant's liability under any other provision of the securities laws, including without limitation Rule 10b–5 (§ 240.10b–5 of this chapter) under the Exchange Act and Section 11 of the Securities Act. This rule does not apply to Item 3.05 of Form 8–K.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

14. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

15. By amending Form 8–K (referenced in § 249.308) by revising General Instructions B.1, B.2, B.3, B.4 and B.5, and by revising all of the items appearing under the caption ''Information to Be Included in the Report'' after the General Instructions to read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8–K

Current Report

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

General Instructions

* * * * *

B. Events To Be Reported and Time for Filing of Reports

1. A report on this form is required to be filed upon the occurrence of any one or more of the events specified in the items in Sections 1–5 of this form. A report is to be filed within two business days after occurrence of the event. If the event occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the two business day period shall begin to run on and include the first business day thereafter. A registrant either furnishing a report on this form under Item 6.01 (Regulation FD Disclosure) or electing to file a report on this form under Item 7.01 (Other Events) solely to satisfy its obligations under Regulation FD (§ 243.100 and § 243.101 of this chapter) must furnish such report or make such filing in accordance with the requirements of Rule 100(a) of Regulation FD (§ 243.100(a) of this chapter).

2. The information in a report furnished pursuant to Item 6.01 (Regulation FD Disclosure) shall not be deemed to be ''filed'' for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the registrant specifically states that the information is to be considered ''filed'' under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act.

3. If the registrant previously has reported substantially the same information as required by this form, the registrant need not make an additional report of the information on this form. To the extent that an item calls for disclosure of subsequent developments concerning a previously reported event or transaction, any information required in the new report about the previously reported event or transaction may be provided by incorporation by reference to the previously filed report. The term ''previously reported'' is defined in Rule 12b–2 (§ 240.12b–2 of this chapter).

4. When considering current reporting on this form, particularly of other events of material importance pursuant to Item 6.01 (Regulation FD Disclosure) and Item 7.01 (Other Events), registrants should have due regard for the accuracy, completeness and currency of the information in registration statements filed under the Securities Act which incorporate by reference information in reports filed pursuant to the Exchange Act, including reports on this form.

5. A registrant's report under Item 6.01 (Regulation FD Disclosure) or Item 7.01 (Other Events) will not be deemed an admission as to the materiality of any information in the report that is required to be disclosed solely by Regulation FD.

* * * * *

Information To Be Included in the Report

Section 1—Registrant's Business and Operations

Item 1.01 Entry into a Material Agreement

If the registrant has entered into an agreement that is material to the registrant and not made in the ordinary course of the registrant's business, or into any material amendment of such agreement, furnish the following information:

(a) The identity of the parties to the agreement and a description of any material relationship between any of the parties other than in respect of the agreement;

(b) A brief description of the agreement;

(c) The rights and obligations of each party to the agreement that are material to the registrant;

(d) Any material conditions to the agreement becoming binding or effective; and

(e) The duration of the agreement and any material termination provisions.

Instructions.

1. For purposes of this Item 1.01, an ''agreement'' means any definitive agreement, whether unconditionally

binding or binding subject to stated conditions, any letter of intent or other non-binding agreement or any similar document.

2. Any material agreement not made in the ordinary course of the registrant's business must be disclosed under this Item 1.01. An agreement is deemed to be not made in the ordinary course of a registrant's business, and therefore must be disclosed under this item, even if the agreement is such as ordinarily accompanies the kind of business conducted by the registrant, if it involves the subject matter identified in Item 601(b)(10)(ii)(A)–(D) of Regulation S–K. An agreement involving the subject matter identified in Item 601(b)(10)(iii)(A) or (B) also must be disclosed unless Item 601(b)(10)(iii)(C) would not require the registrant to file a material contract involving the same subject matter as an exhibit.

3. A registrant must provide disclosure under this Item 1.01 if the registrant succeeds as a party to the agreement by assumption or assignment.

4. Disclosure of a material amendment is required under this item even if the underlying agreement previously has not been disclosed because the agreement was entered into prior to the effective date of this Item 1.01. In such a case, the amendment and the underlying agreement must be filed as exhibits to the report disclosing the amendment.

Item 1.02 Termination of a Material Agreement

If a definitive material agreement, or other material agreement or instrument, which was not made in the ordinary course of the registrant's business and to which the registrant is a party, is terminated and termination of the agreement is material to the registrant, provide the following:

(a) the identity of the parties to the agreement and a description of any material relationship between any of the parties other than in respect of the agreement;

(b) a brief description of the agreement;

(c) a description of the material circumstances surrounding the termination;

(d) any material early termination penalties incurred by the registrant; and

(e) a discussion of management's analysis of the effect of the termination on the registrant.

Instructions.

1. No disclosure is required under this Item 1.02 during negotiations or discussions regarding termination of an agreement unless and until the agreement has been terminated or the registrant decides to terminate the agreement. If the registrant is not the terminating party, no disclosure is required until the terminating party has notified the registrant of the termination in writing, unless the agreement provides for notification in another manner, and all material conditions to termination other than those within the control of the terminating party or the passage of time have been satisfied.

2. Disclosure of the termination of a material agreement is required under this item even if the agreement previously was not disclosed because the agreement was entered into prior to effectiveness of Item 1.01. In such a case, the terminated material agreement must be filed as an exhibit to the report disclosing the termination.

Item 1.03 Termination or Reduction of Business Relationship with Customer

If the registrant becomes aware that a customer has terminated or reduced the scope of a business relationship with the registrant and the amount of loss of revenues to the registrant from such termination or reduction represents an amount equal to 10% or more of the registrant's consolidated revenues during the registrant's most recent fiscal year, identify the customer and discuss management's analysis of the effect of the loss or reduction on the registrant. For purposes of this item, a group of customers under common control or customers that are affiliates of each other would be regarded as a single customer.

Instruction. No disclosure is required under this Item 1.03 during negotiations or discussions with a customer or group of related customers unless and until an executive officer of the registrant is aware that the termination or reduction required to be disclosed has occurred or will occur. A reduction or suspension of orders will not trigger a disclosure requirement unless and until an executive officer of the registrant is aware that a termination of reduction of a business relationship requiring disclosure has occurred.

Section 2—Financial Information

Item 2.01 Completion of Acquisition or Disposition of Assets

If the registrant or any of its majority-owned subsidiaries has completed the acquisition or disposition of a significant amount of assets, otherwise than in the ordinary course of business, furnish the following information:

(a) The date of completion of the transaction;

(b) A brief description of the assets involved;

(c) The nature and amount of consideration given or received for the assets and, if applicable, the formula or principle followed in determining the amount of such consideration;

(d) The identity of the person(s) from whom the assets were acquired or to whom they were sold and the nature of any material relationship, other than in respect of the transaction, between such person(s) and the registrant or any of its affiliates, or any director or officer of the registrant, or any associate of any such director or officer; and

(e) If the transaction being reported is an acquisition, the source and the amount of funds or other consideration used in making the purchases, and if any part of the purchase price is represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, trading or voting the securities, a description of the transaction and the names of the parties to the transaction, except that if the source of all or any part of the funds is a loan made in the ordinary course of business by a bank, as defined in Section 3(a)(6) of the Exchange Act, the name of the bank shall not be made available to the public if the person at the time of filing the report so requests in writing and files such request, naming such bank, with the Secretary of the Commission.

Instructions.

1. No information need be given as to (i) any transaction between any person and any wholly-owned subsidiary of such person; (ii) any transaction between two or more wholly-owned subsidiaries of any person; or (iii) the redemption or other acquisition of securities from the public, or the sale or other disposition of securities to the public, by the issuer of such securities.

2. The term ''acquisition'' includes every purchase, acquisition by lease, exchange, merger, consolidation, succession or other acquisition, except that the term does not include the construction or development of property by or for the registrant or its subsidiaries or the acquisition of materials for such purpose. The term ''disposition'' includes every sale, disposition by lease, exchange, merger, consolidation, mortgage, assignment or hypothecation of assets, whether for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.

3. The information called for by this item is to be given as to each transaction or series of related transactions of the size indicated. The acquisition or disposition of securities is deemed the indirect acquisition or disposition of the assets represented by such securities if

it results in the acquisition or disposition of control of such assets.

4. An acquisition or disposition shall be deemed to involve a significant amount of assets:

(i) If the registrant's and its other subsidiaries' equity in the net book value of such assets or the amount paid or received for the assets upon such acquisition or disposition exceeded 10% of the total assets of the registrant and its consolidated subsidiaries; or

(ii) If it involved a business (see § 210.11–01(d) of this chapter) that is significant (see § 210.11–01(b) of this chapter).

Acquisitions of individually insignificant businesses are not required to be reported pursuant to this Item 2.01 unless they are related businesses (see § 210.3–05(a)(3) of this chapter) and are significant in the aggregate.

5. Attention is directed to the requirements in Item 8.01 (Financial Statements and Exhibits) with respect to the filing of:

(i) Financial statements of businesses acquired;

(ii) Pro forma financial information; and

(iii) Copies of the plans of acquisition or disposition as exhibits to the report.

Item 2.02 Bankruptcy or Receivership

(a) If a receiver, fiscal agent or similar officer has been appointed for a registrant or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under State or Federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the registrant or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental authority, disclose the following:

(1) The name or other identification of the proceeding;

(2) The identity of the court or governmental authority;

(3) The date that jurisdiction was assumed; and

(4) The identity of the receiver, fiscal agent or similar officer and the date of his or her appointment.

(b) If an order confirming a plan of reorganization, arrangement or liquidation has been entered by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the registrant or its parent, disclose the following;

(1) The identity of the court or governmental authority;

(2) The date that the order confirming the plan was entered by the court or governmental authority;

(3) A summary of the material features of the plan and, pursuant to Item 8.01 (Financial Statements and Exhibits), a copy of the plan as confirmed;

(4) The number of shares or other units of the registrant or its parent issued and outstanding, the number reserved for future issuance in respect of claims and interests filed and allowed under the plan, and the aggregate total of such numbers; and

(5) Information as to the assets and liabilities of the registrant or its parent as of the date that the order confirming the plan was entered, or a date as close thereto as practicable.

Instruction. The information called for in paragraph (b)(5) of this Item 2.02 may be presented in the form in which it was furnished to the court or governmental authority.

Item 2.03 Creation of a Direct or Contingent Financial Obligation That Is Material to the Registrant

If the registrant or any third party enters into a transaction or agreement that creates any material direct or contingent financial obligation to which the registrant is subject, furnish the following information:

(a) A brief description of the transaction or agreement, including an identification of the parties to the agreement;

(b) The nature and amount of the material direct or contingent financial obligation created by the transaction or agreement, including a description of the events that may cause the obligation to arise, increase, or become accelerated;

(c) If applicable, the names of any underwriters or placement or other agents for the transaction, or any persons performing a similar function in the case of a private transaction, and the amount of any fees or other compensation paid to them;

(d) In the case of a transaction or agreement without underwriters or placement or other agents or persons performing a similar function, the names of any lenders or other persons who are the beneficiaries of the obligation described in paragraph (b) of this Item 2.03; and

(e) A discussion of management's analysis of the effect of the direct or contingent financial obligation on the registrant.

Instructions.

1. Disclosure is required if the registrant becomes subject to the direct or contingent financial obligation, whether or not the registrant is a party to the agreement.

2. No obligation to make disclosure under this Item 2.03 shall arise until a definitive agreement that is unconditional or subject only to customary closing conditions exists or, if there is no such agreement, when settlement of the transaction occurs.

3. If the transaction or agreement has been or will be disclosed in a prospectus related to a registrant statement of the registrant filed in the required time period under Securities Act Rule 424 (§ 230.424 of this chapter), disclosure may be made by reference to that prospectus to the extent the prospectus contains the required information.

4. No disclosure is required with respect to the issuance of notes, drafts, acceptances, bills of exchange or other commercial instruments with a maturity of one year or less issued in the ordinary course of the registrant's business.

5. For purposes of this item, the term ''contingent financial obligation'' includes guarantees, co-obligor arrangements, obligations under keepwell agreements, obligations to purchase assets and any similar arrangements and all other obligations that exist or may arise under an agreement. For purposes of this instruction, a ''keepwell agreement'' means any agreement or undertaking under which the registrant is, or would be, obligated to provide or arrange for the provision of funds or property to an affiliate or third party.

Item 2.04 Events Triggering a Direct or Contingent Financial Obligation That Is Material to the Registrant

(a) If a triggering event as defined in paragraph (b) occurs, furnish the following information:

(1) A description of the agreement or agreements under which the triggering event occurred;

(2) A description of the triggering event;

(3) The nature and amount of the material direct or contingent financial obligation of the registrant that may arise, increase or become accelerated as a result of the triggering event, including obligations under cross-default, cross-acceleration or similar arrangements; and

(4) A discussion of management's analysis of the effect on the registrant of the triggering event and of the obligations that have arisen, increased or been accelerated.

(b) For purposes of this Item 2.04, a ''triggering event'' shall be an event, including an event of default, event of acceleration or similar event, that has occurred and as a consequence of which, either (i) unconditionally, or

subject to no condition other than the passage of time, a material direct or contingent financial obligation of the registrant has arisen (including as a result of an increase in an obligation) or been accelerated, or (ii) a party to the agreement shall have the unconditional right to cause such an obligation to arise or be accelerated, in either case whether or not the registrant is a defaulting party; *provided, however,* that no triggering event shall be deemed to have occurred during negotiations or discussions to which the registrant is a party regarding a determination of whether a triggering event has occurred, a waiver of the triggering event, an amendment that would cure the triggering event or a similar arrangement, unless a party to the agreement with the right to do so notifies to the registrant or otherwise declares that the triggering event has occurred. Such notice or declaration must be in writing unless the agreement provides for notification in another manner.

Instructions.

1. So long as the registrant becomes, or will become, subject to a direct or contingent financial obligation as the result of the occurrence of a triggering event, a report under this item is required. The registrant need not be a party to the agreement under which the triggering event occurs.

2. For purposes of this item, ''contingent financial obligations'' includes guarantees, co-obligor arrangements, obligations under keepwell agreements, obligations to purchase assets and any similar arrangements and all other obligations that exist or may arise under an agreement. For purposes of this instruction, a ''keepwell agreement'' means any agreement or undertaking under which the registrant is, or would be, obligated to provide or arrange for the provision of funds or property to an affiliate or other third party.

Item 2.05 Exit Activities Including Material Write-Offs and Restructuring Charges

If the Board of Directors or the registrant's officer or officers authorized to take such action, if board approval is not required, definitively commits the registrant to a course of action, including, without limitation, a plan of termination or plan to exit an activity, under which material write-offs or restructuring charges will be incurred under generally accepted accounting principles applicable to the registrant, furnish the following information:

(a) The date on which such commitment was made;

(b) A description of the course of action and the reasons for the write-off or restructuring charge;

(c) A description of the asset or assets subject to write-off;

(d) The estimated amount of the write-off or restructuring charge;

(e) The estimated amount of the write-off or restructuring charge that will result in future cash expenditures; and

(f) An analysis of the effect of the write-off or restructuring charge on the company, including the segment affected.

Item 2.06 Material Impairments

If the Board of Directors or the registrant's officer or officers authorized to make the relevant conclusion, if board approval is not required, concludes that the registrant is required to record a material charge for impairment to one or more of its assets, including, without limitation, impairments of securities or goodwill, under generally accepted accounting principles applicable to the registrant, furnish the following information:

(a) The date on which the conclusion was reached;

(b) A description of the asset or assets subject to impairment and the facts and circumstances leading to the impairment;

(c) The estimated amount of the impairment charge; and

(d) An analysis of the effect of the impairment charge on the registrant, including the segment affected.

Section 3—Securities and Trading Markets

Item 3.01 Rating Agency Decisions

(a) Furnish the information required by paragraph (b) of this Item 3.01 if the registrant is notified by, or receives any communication from, any rating agency to whom the registrant provides information (other than its annual report or reports filed with the Commission) to the effect that the organization has decided to:

(1) Change or withdraw the credit rating assigned to, or outlook on, the registrant or any class of debt or preferred security or other indebtedness of the registrant (including securities or obligations as to which the registrant is a guarantor or has a contingent financial obligation);

(2) Refuse to assign a credit rating to the registrant, to any class of the registrant's securities, or to any of the registrant's indebtedness after being requested to do so by the registrant;

(3) Place the registrant or any class of the registrant's securities or indebtedness on ''credit watch'' or similar status; or

(4) Take any similar action.

(b) If the registrant has received any notification or other communication as described in paragraph (a) of this Item 3.01, file the notice as an exhibit to the report on Form 8–K and furnish the following information:

(1) The date of the registrant received the notification or communication;

(2) The name of the rating agency;

(3) The nature of the rating agency's decision; and

(4) A discussion of management's analysis of the effect of the change or other decision on the registrant.

Instructions.

1. No disclosure need be made under this Item 3.01 during any discussions between the registrant and any rating organization regarding any decision required to be disclosed unless and until the rating organization notifies the registrant that the rating organization has made a final decision to take such action.

2. For purposes of this Item 3.01, the term ''rating agency'' means an entity whose primary business is the issuance of credit ratings.

3. The term ''contingent financial obligation'' as used in this Item 3.01 has the same meaning as in the definition included in Instruction 4 to Item 2.03 of this Form.

Item 3.02 Notice of Delisting or Failure To Satisfy Listing Standards; Transfer of Listing

(a) If the registrant has received notice from the national securities exchange or national securities association that is the principal trading market for a class of the registrant's common stock or similar equity securities to the effect that the registrant or a class of the registrant's securities does not satisfy the listing requirements or standards of the exchange or association, or that a class of the registrant's securities has been delisted from or by the exchange or association, furnish the following information:

(1) The date that the registrant received the notice;

(2) The listing requirement or standard that the registrant failed to satisfy or the reason for the delisting as indicated by the exchange or association; and

(3) A discussion of the planned response of the registrant to the notice and management's analysis of the effect of the delisting or the failure to satisfy a listing standard on the registrant.

(b) If the registrant has taken definitive action to cause the listing or quotation of a class of its common stock or similar equity securities to be terminated from the national securities

exchange or inter-dealer quotation system of a registered national securities association that is the principal trading market for that class of securities, including by reason of a transfer of the listing or quotation to another securities exchange or quotation system, furnish a description of the action taken and date of the action.

Item 3.03 Unregistered Sales of Equity Securities

If the registrant sells equity securities in a transaction that is not registered under the Securities Act, furnish the information set forth in paragraphs (a) through (e) of Item 701 of Regulation S–K (§ 229.701(a) through (e) of this chapter). The registrant has no obligation to disclose the information required by this Item 3.03 until a definitive agreement for the sale of equity securities that is unconditional or subject only to customary closing conditions exists, or if there is no such agreement, when settlement of the sale occurs.

Item 3.04 Material Modification to Rights of Security Holders

(a) If the constituent instruments defining the rights of the holders of any class of registered securities have been materially modified and such modification was not reported in a publicly filed definitive proxy statement or information statement under Section 14 of the Exchange Act, state the title of the class of securities involved and describe briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Section 4—Matters Related to Accountants

Item 4.01 Changes in Registrant's Certifying Accountant

(a) If an independent accountant who was previously engaged as the principal accountant to audit the registrant's financial statements, or an independent accountant upon whom the principal accountant expressed reliance in its report regarding a significant subsidiary, resigns (or indicates that it declines to stand for re-appointment after completion of the current audit) or is dismissed, provide the information required by Item 304(a)(1) of Regulation S–K, including compliance with Item 304(a)(3) of Regulation S–K (§ 229.304(a)(1) and (a)(3) of this chapter).

(b) If a new independent accountant has been engaged as either the principal accountant to audit the registrant's financial statements or as an independent accountant on whom the principal accountant is expected to express reliance in its report regarding a significant subsidiary, then provide the information required by Item 304(a)(2) of Regulation S–K (§ 229.304(a)(2) of this chapter).

Instruction. The resignation or dismissal of an independent accountant, or its declination to stand for re-appointment, is a reportable event separate from the engagement of a new independent accountant. On some occasions, two reports on Form 8–K are required for a single change in accountants, the first on the resignation (or declination to stand for re-appointment) or dismissal of the former accountant and the second when the new accountant is engaged. Information required in the second Form 8–K in such situations need not be provided to the extent that it has been reported previously in the first Form 8–K.

Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report

(a) If the audit committee, or the board of directors in the absence of an audit committee, or the company's officer or officers authorized to make such a conclusion, conclude that any previously issued financial statements, covering one or more years for which the registrant is required to provide audited financial statements under Regulation S–X or Regulation S–B, should no longer be relied upon, or if the registrant receives notice from its current or a previously engaged independent accountant that action should be taken to prevent future reliance on a previously issued report related to any such financial statements, furnish the following information:

(1) The date on which the conclusion was reached or the registrant received the notice;

(2) A description of the events giving rise to the conclusion or notice related to the reliability of the financial statements;

(3) A statement of whether the audit committee, or the board of directors in the absence of an audit committee, discussed with the independent accountant the subject matter giving rise to the conclusion or notice; and

(4) A description of management's plans to alleviate the issue.

(b) In addition, the registrant must:

(1) Provide the independent accountant with a copy of the disclosures it is making in response to this Item 4.02 that the independent accountant shall receive no later than the business day following the day that the registrant files the disclosures with the Commission;

(2) Request the independent accountant to furnish the registrant as promptly as possible with a letter addressed to the Commission stating whether the independent accountant agrees with the statements made by the registrant in response to this Item 4.02 and, if not, stating the respects in which it does not agree; and

(3) File the independent accountant's letter with the Commission within two business days after receipt as an exhibit by amendment to the report on Form 8–K.

Section 5—Corporate Governance and Management

Item 5.01 Changes in Control of Registrant

(a) If, to the knowledge of management, a change in control of the registrant has occurred, furnish the following information:

(1) The identity of the person(s) who acquired such control;

(2) The date and a description of the transaction(s) which resulted in the change in control;

(3) The basis of the control, including the percentage of voting securities of the registrant now beneficially owned directly or indirectly by the person(s) who acquired control;

(4) The amount of the consideration used by such person(s);

(5) The source and the amount of funds or other consideration used in making the purchases, and if any part of the purchase price is represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, trading or voting the securities, a description of the transaction and the names of the parties to the transaction, except that if the source of all or any part of the funds is a loan made in the ordinary course of business by a bank, as defined in Section 3(a)(6) of the Exchange Act, the name of the bank shall not be made available to the public if the person at the time of filing the report so requests in writing and files such request, naming such bank, with the Secretary of the Commission;

(6) The identity of the person(s) from whom control was assumed; and

(7) Any arrangements or understandings among members of both

the former and new control groups and their associates with respect to election of directors or other matters.

(b) Furnish the information required by Item 403(c) of Regulation S–K.

Instructions. Responses to this Item 5.01 may be given by reference to any earlier filing with the Commission pursuant to its rules under the Exchange Act.

Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers

(a)(1) If a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of shareholders because of a disagreement with the registrant, known to an executive officer of the registrant, on any matter relating to the registrant's operations, policies or practices, or if a director has been removed for cause from the board of directors, the registrant must:

(i) State the date of such resignation, declination to stand for re-election, or removal;

(ii) State any positions held by the director on any committee of the board of directors before the director's resignation, declination to stand for re-election, or removal; and

(iii) Briefly describe the circumstances of the director's resignation, declination to stand for re-election or removal.

(2) If the director has furnished the registrant with any written document concerning the circumstances surrounding his or her resignation, declination, or removal, the registrant shall summarize the contents of that document and file a copy of the document as an exhibit to the report on Form 8–K.

(3) The registrant also must:

(i) Provide the director with a copy of the disclosures it is making in response to this Item 5.02, which the director shall receive no later than the business day following the day that the registrant files the disclosures with the Commission;

(ii) Request the director to furnish the registrant as promptly as possible with a letter addressed to the Commission stating whether he or she agrees with the statements made by the registrant in response to this Item 5.02 and, if not, stating the respects in which he or she does not agree; and

(iii) File the director's letter with the Commission within two business days after receipt as an exhibit by amendment to the report on Form 8–K.

(b) If the registrant's chief executive officer, president, chief financial officer, chief accounting officer, chief operating officer, or any person serving an equivalent function, has resigned or been terminated from that position, or if a director has resigned, been removed, or declined to stand for re-election (except in circumstances described in paragraph (a) of this Item 5.02), furnish the following information:

(1) The date when the event occurred; and

(2) A description of the reasons for the event.

(c) If the registrant appoints a new principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or person serving an equivalent function, furnish the following information:

(1) The name and position of the newly appointed officer and the date of the appointment;

(2) A brief description of any arrangement or understanding between the newly appointed officer and any other persons, naming such persons, pursuant to which such officer was selected as an officer;

(3) The information required by Items 401(d), 401(e) and 404(a) of Regulation S–K (§§ 229.401(d) and (e) and § 229.404(a) of this chapter); and

(4) A brief description of the material terms of any employment agreement between the registrant and that officer.

(d) If the registrant elects a new director, except by a vote of security holders at an annual meeting, furnish the following information:

(1) The name of the newly elected director and the date of election;

(2) A brief description of any arrangement or understanding between the new director and any other persons, naming such persons, pursuant to which such director was selected as a director;

(3) The committees of the board of directors to which the new director has been, or at the time of this disclosure is expected to be, named; and

(4) the information required by Item 404(a) of Regulation S–K (§ 229.404(a) of this chapter).

Instruction. To the extent that any information called for in clauses (3) and (4) of paragraph (c) or clauses (3) and (4) of paragraph (d) of this Item 5.02 is undetermined at the time of the required filing, that fact shall be stated in the filing and the registrant shall make an amended filing under this Item 5.02 containing such information within two business days after the information is determined.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

(a) If the registrant amends its articles of incorporation or bylaws and the amendment was not disclosed in a proxy statement or information statement filed by the registrant, furnish the following information:

(1) The effective date of the amendment;

(2) A description of the provision adopted or changed by amendment and, if applicable, the previous provision; and

(3) In the event of an amendment to change the fiscal year of the registrant from that used in its most recent filing with the Commission, state the date of the new fiscal year end and the form (for example, Form 10–K, Form 10–KSB, Form 10–Q or Form 10–QSB) on which the report covering the transition period will be filed.

(b) If the registrant determines to change the fiscal year from that used in its most recent filing with the Commission other than by means of:

(1) A submission to a vote of security holders through the solicitation of proxies or otherwise; or

(2) An amendment to its articles of incorporation or bylaws, state the date of such determination, the date of the new fiscal year end, and the form (for example, Form 10–K, Form 10–KSB, Form 10–Q or Form 10–QSB) on which the report covering the transition period will be filed.

Item 5.04 Material Events Regarding the Registrant's Employee Benefit, Retirement and Stock Ownership Plans

If the registrant becomes aware that an event will occur that will materially limit, restrict, or prohibit the ability of participants to acquire, dispose or convert assets in any employee benefit, retirement or stock ownership plan of the registrant, other than a periodic or other limitation, restriction or prohibition based on presumed or actual knowledge of, or access to, material non-public information, and that plan is broadly available to the registrant's employees, furnish the following information:

(a) The period or expected period of the limitation;

(b) A description of the nature of the limitation; and

(c) A description of the circumstances surrounding, or reasons for, the limitation.

Section 6—Regulation FD

Item 6.01 Regulation FD Disclosure

Unless filed under Item 7.01, report under this item only information that

the registrant elects to disclose through Form 8–K pursuant to Regulation FD (§§ 243.100–243.103 of this chapter).

Section 7—Other Events

Item 7.01 Other Events

The registrant may, at its option, report under this item any events, with respect to which information is not otherwise called for by this form, that the registrant deems of importance to security holders. The registrant may, at its option, file a report under this item disclosing the nonpublic information required to be disclosed by Regulation FD (§§ 243.100–243.103 of this chapter).

Section 8—Financial Statements and Exhibits

Item 8.01 Financial Statements and Exhibits.

List below the financial statements, pro forma financial information and exhibits, if any, filed as a part of this report.

(a) Financial statements of businesses acquired.

(1) For any business acquisition required to be described in answer to Item 2.01, financial statements of the business acquired shall be filed for the periods specified in Rule 3–05(b) of Regulation S–X (§ 210.3–05(b) of this chapter).

(2) The financial statements shall be prepared pursuant to Regulation S–X except that supporting schedules need not be filed. A manually signed accountants' report should be provided pursuant to Rule 2–02 of Regulation S–X [§ 210.2–02 of this chapter].

(3) With regard to the acquisition of one or more real estate properties, the financial statements and any additional information specified by Rule 3–14 of Regulation S–X (§ 210.3–14 of this chapter) shall be filed.

(4) Financial statements required by this item may be filed with the initial report, or by amendment not later than 60 days after the date that the initial report on Form 8–K must be filed. If the financial statements are not included in the initial report, the registrant should so indicate in the Form 8–K report and state when the required financial statements will be filed. The registrant may, at its option, include unaudited financial statements in the initial report on Form 8–K.

(b) Pro forma financial information.

(1) For any transaction required to be described in answer to Item 2.01 above, furnish any pro forma financial information that would be required pursuant to Article 11 of Regulation S–X.

(2) The provisions of (a)(4) above shall also apply to pro forma financial information relative to the acquired business.

(c) Exhibits. The exhibits shall be furnished in accordance with the provisions of Item 601 of Regulation S–K (§ 229.601 of this chapter).

Instructions. During the period after a registrant has reported a business combination pursuant to Item 2.01, until the date on which the financial statements specified by this Item 8.01 must be filed, the registrant will be deemed current for purposes of its reporting obligations under Section 13(a) or 15(d) of the Securities Exchange Act of 1934. With respect to filings under the Securities Act of 1933, however, registration statements will not be declared effective and post-effective amendments to registrations statements will not be declared effective unless financial statements meeting the requirements of Rule 3–05 of Regulation S–X (§ 210.3–05 of this chapter) are provided. In addition, offerings should not be made pursuant to effective registration statements or pursuant to Rules 505 and 506 of Regulation D (§§ 230.501 through 506 of this chapter), where any purchasers are not accredited investors under Rule 501(a) of that Regulation, until the audited financial statements required by Rule 3–05 of Regulation S–X (§ 210.3–05 of this chapter) are filed. Provided, however, that the following offerings or sales of securities may proceed notwithstanding that financial statements of the acquired business have not been filed:

(a) Offerings or sales of securities upon the conversion of outstanding convertible securities or upon the exercise of outstanding warrants or rights;

(b) Dividend or interest reinvestment plans;

(c) Employee benefit plans;

(d) Transactions involving secondary offerings; or

(e) Sales of securities pursuant to Rule 144 (§ 230.144 of this chapter).

* * * * *

16. Amend Form 10–Q (referenced in § 249.308a) by:

a. Deleting Items 2(a), 2(b), 2(c), 3, 4, 5 and 6(b) in Part II—Other Information;

b. Removing the paragraph (d) designation in Item 2;

c. Re-designating Item 6 as Item 3;

d. Deleting the words ''and Reports on Form 8–K (§ 249.308 of this chapter)'' from the caption to newly re-designated Item 3; and

e. Removing the paragraph (a) designation in newly re-designated Item 3.

17. Amend Form 10–QSB (referenced in § 249.308b) by:

a. Deleting Items 2(a), 2(b), 2(c), 3, 4, 5 and 6(b) in Part II—Other Information;

b. Removing the paragraph (d) designation in Item 2;

c. Re-designating Item 6 as Item 3;

d. Deleting the words ''and Reports on Form 8–K'' from the caption to newly re-designated Item 3; and

e. Removing the paragraph (a) designation in newly re-designated Item 3.

18. Amend Form 10–K (referenced in § 249.310) by:

a. Revising Items 5 and 9;

b. Deleting paragraph (b) of Item 14;

c. Revising the caption to Item 14 to read ''Exhibits and Financial Statement Schedules''; and

d. Re-designating Items 14(c) and (d) as Items 14(b) and (c).

The revisions and additions read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Part II

Item 5 Market for Registrant's Common Equity and Related Stockholder Matters

(a) Furnish the information required by Item 201 of Regulation S–K (§ 229.201 of this chapter).

* * * * *

Item 9 [Reserved]

* * * * *

19. Amend Form 10–KSB (referenced in § 249.310a) by:

a. Revising Items 5 and 8;

b. Deleting paragraph (b) of Item 13;

c. Deleting the words ''and Reports on Form 8–K'' from the caption to Item 13;

d. Removing the paragraph (a) designation in Item 13;

e. Deleting Items 3, 4 and 6 in Part II of ''Information Required in Annual Report of Transitional Small Business Issuers''; and

f. re-designating Item 5 in Part II of ''Information Required in Annual Report of Transitional Small Business Issuers'' as Item 3.

The revisions and additions read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

(Check one)

[ ] Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Part II

Item 5 Market for Registrant's Common Equity and Related Stockholder Matters

(a) Furnish the information required by Item 201 of Regulation S–B (§ 228.201 of this chapter).

* * * * *

Item 8 [Reserved]

* * * * *

20. Amend § 249.322 by revising paragraph (a) to read as follows:

§ 249.322 Form 12b–25—Notification of late filing.

(a) This form shall be filed pursuant to § 240.12b–25 of this chapter by issuers who are unable to file timely all or any required portion of an annual or transition report on Form 10–K and Form 10–KSB, 20–F, or 11–K or a quarterly or transition report on Form 10–Q and Form 10–QSB or a current report on Form 8–K pursuant to section 13 or 15(d) of the Act or a semi-annual, annual or transition report on Form N–SAR pursuant to section 30 of the Investment Company Act of 1940. The filing shall consist of a signed original and three conformed copies, and shall be filed with the Commission at Washington, DC 20549, no later than one business day after the due date for the periodic report in question. Copies of this form may be obtained from ''Publications'', Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549 and at our website at http://www.sec.gov.

* * * * *

21. Amend Form 12b–25 (referenced in § 249.322) by:

a. Revising the preamble;

b. Revising paragraph (b) of Part II; and

c. Revising Part III to read as follows:

Note: The text of Form 12b–25 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 12b–25

Notification of Late Filing

(Check One): __ Form 10–K __ Form 20–F __ Form 11–K __ Form 10–Q __ Form 8–K __ Form N–SAR

* * * * *

Part II—Rules 12B–25(b) and (c)

* * * * *

(b) The subject annual report, semi-annual report, transition report on Form 10–K, Form 20–F, Form 11–K or Form N–SAR, or portion thereof, will be filed on or before the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10–Q, or portion thereof, will be filed on or before the fifth calendar day following the prescribed due date; or the subject current report on Form 8–K will be filed on or before the second business day following the prescribed due date; and

* * * * *

Part III—Narrative

State below in reasonable detail why forms 10–K, 20–F, 11–K, 10–Q, 8–K, N–SAR, or the transition report or portion thereof, could not be filed within the prescribed time period.

* * * * *

Dated: June 17, 2002.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15706 Filed 6–24–02; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Tuesday,

June 25, 2002

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 105, 106, 107, and 171

Revised and Clarified Hazardous Materials Safety Rulemaking and Program Procedures; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 105, 106, 107, and 171

[Docket No. RSPA–98–3974]

RIN 2137–AD20

Revised and Clarified Hazardous Materials Safety Rulemaking and Program Procedures

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

ACTION: Final rule.

SUMMARY: In this final rule, RSPA revises and clarifies its hazardous materials safety rulemaking and program procedures. RSPA has re-written the rulemaking procedures in plain language and made minor substantive changes for clarification. In addition, RSPA created a new part that contains defined terms used in RSPA's procedural regulations.

DATES: This final rule is effective July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Karin V. Christian, Office of the Chief Counsel, (202) 366–4400, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

1. Background Information

On December 11, 1998, RSPA (''we'') published a Notice of Proposed Rulemaking (''Notice'') that had two purposes: (1) To re-write in plain language, clarify, and make minor substantive changes to RSPA's hazardous materials safety rulemaking and program procedures, and (2) to propose a new **Federal Register** format. (63 FR 68624). These changes responded to a June 1, 1998 Executive Memorandum directing Federal agencies to make communications with the public more understandable.

The Office of the Federal Register (OFR) is currently considering various format options and has not made any final decisions with regard to format changes. On March 23, 2001, OFR printed a document in the **Federal Register** illustrating a possible new two-column format and possible changes in fonts, headings, line spacing, and tables. (66 FR 16374). On May 14, 2002, OFR published a document with a modified two-column format. (67 FR 34573). OFR invited agencies and the public to comment on the proposed format. Because OFR is in the process of considering format changes, in this final rule we are finalizing only our plain language re-write and some minor substantive changes to clarify the regulations. We are not making format changes.

We received 18 comments, including comments from industry associations, private citizens, and other Federal agencies. Other Federal agencies and groups filed comments directly with the Office of the Federal Register commenting on the proposed new **Federal Register** format. Comments from Federal agencies focused on the new format we proposed, while private citizens and industry groups commented on the minor substantive changes, the proposed format, or both.

In addition to the comments we received in response to our Notice, RSPA received additional comments on the procedural regulations in response to a December 20, 1999 notice published as part of its Regulatory Flexibility Act review. Section 610 of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires agencies to conduct periodic reviews of rules that have a significant economic impact on a substantial number of small business entities. In the December 20, 1999 Notice, focusing on parts 106, 107 and 171, RSPA invited comments on both the economic impact of its regulations and on ways to make the regulations easier to read and understand. In response to the Notice, RSPA received comments from the Institute of Makers of Explosives and E.I. DuPont de Nemours & Co. (DuPont) regarding plain language efforts.

Many commenters applauded RSPA's efforts to make the regulations easier to read and understand. Commenters stated that the proposed plain language changes would make it easier to find and understand the regulations. Most supported various minor substantive changes and format changes.

Several commenters expressed caution regarding future efforts to re-write the regulations. The Association of Waste Hazardous Materials Transporters stated that, in view of the limited resources available to RSPA to accomplish its more substantive rulemakings, it believes that additional plain language changes should only be made when we are issuing new rules or substantively revising or updating existing rules. The Hazardous Materials Advisory Council [now the Dangerous Goods Advisory Council] expressed concern that plain language efforts not delay other important rules.

RSPA agrees with commenters' concerns about using limited resources to re-write regulations when substantive rulemaking actions are pending. In order to maximize resources, we plan to make plain language improvements only as sections or parts are being reviewed and revised for substantive reasons.

RSPA used a question-and-answer format for the proposed changes to the procedural regulations. After reviewing the question headings, we decided to convert them to non-question headings. These are more concise and direct. In addition, because we may not re-write the rest of the procedural regulations for quite some time, the non-question headings are consistent with the headings currently used in the rest of the regulations. If we used question headings in a portion of the procedural regulations, the format would not have been consistent.

The Chemical Manufacturers' Association (CMA) [now the American Chemistry Council] said that RSPA should ensure the regulatory intent is not lost when regulations are rewritten in plain language. CMA also stated that new substantive and procedural regulations should be in separate notices and not in plain language re-write notices. In this final rule, RSPA is making only minor changes to clarify the existing regulations.

Below is a discussion of the minor substantive changes we proposed and the comments we received.

2. Minor Substantive Changes

In this rule, we are revising all of part 106 and creating a new part 105. We are clarifying existing requirements and making minor substantive changes that are explained in the following paragraphs.

Part 105

We are creating a new part 105 to contain general information and definitions. To do this, we are moving the general information on how to obtain information from us about our procedural regulations and the Hazardous Materials Regulations (HMR; Parts 171–180) from part 107 into a newly created part 105. The new part 105 also contains information on subpoenas and service of documents.

We are revising mailing addresses throughout parts 105 and 106 to ensure that documents reach the appropriate RSPA office. In this final rule, we are also up-dating some information contained in the Notice of Proposed Rulemaking because the location of certain information in RSPA changed since the time of the proposal. For example, RSPA's Hazardous Materials Record Center no longer houses rulemaking documents, interpretations, or preemption documents. This information can now be accessed by visiting the Docket Management System

(*http://dms.dot.gov*) or through the Internet Web site (*http://hazmat.dot.gov*). For older information received by RSPA before February 1, 1997, you may obtain rulemaking information from the Office of Hazardous Materials Standards and preemption information from the Office of the Chief Counsel. In this final rule, we are also adding a reference under § 105.25 to the Office of Hazardous Materials Safety's ''Fax On Demand System'' through which a requester may choose documents (e.g., proposed and final rules, DOT forms, letters of clarification, and safety notices) to be faxed to his or her fax machine by dialing 1–800–467–4922 and selecting Option 2.

The Association of Waste Hazardous Materials Transporters requested that we clarify the regulations in part 105 concerning filing requests for information under the Freedom of Information Act (FOIA). In response to that comment, we added § 105.26 referring readers to the Department's FOIA regulations in 49 CFR part 7. Part 7 explains the procedures for filing requests for records under FOIA and also provides RSPA contact information.

We received a number of comments concerning the location of definitions and the ''plain language'' definitions themselves. CMA, the Truck Trailer Manufacturers Association, the National Propane Gas Association, and DuPont supported locating all definitions in one section. Several urged RSPA to expand part 105 and incorporate in a single location all the definitions currently spread throughout the regulations and the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*). Because States do not adopt the procedural regulations contained in parts 105, 106, and 107 and instead adopt only the Hazardous Materials Regulations (HMR), beginning at part 171, RSPA is not moving all other definitions into new part 105. This approach will facilitate State incorporation of the HMR as a self-contained unit with necessary definitions in § 171.8. New part 105 contains a limited number of definitions rewritten in plain language. Other definitions are contained in part 171 and apply to sections of the HMR.

We are not making any substantive changes to the definitions in new part 105. For definitions contained in part 105 that are also contained in parts 107 and 171, we are changing the definitions in parts 107 and 171 to make them consistent.

Several commenters expressed concern that several definitions in § 105.10 are different than those found in the current regulatory text and different from the statutory definitions. One commenter asked whether definitions in the statute could be changed and mentioned the definition for ''transports'' or ''transportation'' as an example of a definition that differed in the proposed rule and the statute.

Based on these concerns, we compared the definitions that we proposed in § 105.10 with the definitions in other parts of the HMR and in the statute. After comparing these, we are making the definitions more consistent in this final rule.

The following is a discussion of each of the definitions proposed in § 105.10 and the changes we are making.

In this final rule, we are adding ''(49 CFR parts 171 through 180)'' after ''subchapter C of this chapter'' to the definition of ''approval'' that we proposed and are adopting. This change will advise readers about the parts in subchapter C. In addition, in this final rule, we are clarifying that an approval may be issued by agencies or officials other than the Associate Administrator for Hazardous Materials Safety. Therefore, we are adding the words ''or other designated Department official'' after ''from the Associate Administrator for Hazardous Materials Safety.'' We are also making the definitions of ''approval'' in part 107 and § 171.8 consistent with the definition in part 105.

In the definition of ''exemption'' we proposed and are adopting, we are now updating the reference to the Federal Highway Administration to the Federal Motor Carrier Safety Administration to reflect the new DOT agency. In this final rule, we are also changing the definition of ''exemption'' in part 107 to make it consistent with part 105.

Upon review, we decided not to adopt the plain language definition of ''Federal hazardous material transportation law'' we proposed, but to adopt instead the definition of that term now in part 107 and § 171.8. The definition we are adopting uses the legal citation 49 U.S.C. 5101 *et seq.*, rather than the cite 49 U.S.C. 5101 through 5127.

We are adopting the new definition of ''filed'' as proposed. We are using the same new definition of ''filed'' in part 107 for consistency.

With regard to the definition of ''hazardous material,'' we are changing the verbs ''determines'' to ''has determined'' and ''designates'' to ''has designated'' because this language accurately reflects that the designation has already been made. We are also replacing the current definition of hazardous material in § 171.8 to be consistent.

With regard to the definition of ''Indian tribe,'' we will not adopt the proposed definition because ''Indian tribe'' is currently defined in the Federal hazardous materials transportation law. To be consistent with the Federal hazardous materials transportation law, we will use the statutory definition in part 105. We are also replacing the definition in part 107 with the statutory definition.

To further clarify the definition of ''person'' we proposed and are adopting in this final rule, we are replacing the words ''when it'' with ''that'' and the word ''excludes'' with ''does not include.'' We are also adding a sentence to clarify that ''person'' does not include any government or Indian tribe that transports hazardous material for a governmental purpose. To be consistent, we are replacing the definitions of ''person'' in part 107 and § 171.8 with the clarified definition of ''person.''

In the definition of ''political subdivision'' that we proposed and are adopting, we are changing the word ''includes'' to ''means'' because the current definition covers all applicable entities.

In the definition of ''preemption determination,'' we are replacing ''RSPA'' with ''Associate Administrator for Hazardous Materials Safety'' to clarify who in RSPA issues a preemption determination decision.

In the definition of ''regulations issued under Federal hazmat law,'' we are changing ''hazmat law'' to ''Federal hazardous materials transportation law.'' In addition, we are clarifying that the first reference is to subchapter A by deleting ''this'' before subchapter and adding ''A'' to it.

With regard to the definition of ''state,'' we decided not to adopt the proposed definition of ''state.'' After reviewing the definitions, we decided to use the definition of ''state'' set out in § 171.8 because it is clear and simple. In this final rule, we are using that definition in the new part 105 and replacing the definition in part 107 with that definition.

A commenter expressed concern that the definition of ''transportation'' we proposed differed from the definition in the statute. The statutory definition has the word ''the'' before ''movement,'' has no comma after property, does not have the word ''any'' before loading, and has the words ''the movement'' instead of the proposed ''that movement.'' Although we believe these plain language changes were minor editorial changes, we are not adopting the plain language definition. Rather, to be

consistent with the statute, we are using the definition currently set out in the Federal hazardous materials transportation law in both the new part 105 and in part 107.

We are revising the definition of ''waiver of preemption'' we proposed. We are replacing ''RSPA'' with ''Associate Administrator for Hazardous Materials Safety'' to clarify who in RSPA makes the waiver decision and dividing the long sentence that was proposed into two so that it is easier to understand.

Part 106

Section 106.10 contains new information about our rulemaking process. Specifically, it states that we use informal rulemaking procedures under the Administrative Procedure Act. Furthermore, this section sets out the types of rulemaking documents we normally use to propose and adopt changes to our regulations.

Section 106.15 describes an advance notice of proposed rulemaking.

Section 106.20 describes a notice of proposed rulemaking.

Section 106.30 describes a final rule.

Section 106.35 describes an interim final rule.

Section 106.40 describes a direct final rule.

Section 106.70 states that commenters may electronically file their comments in a rulemaking proceeding through the Internet to *http://dms.dot.gov.* Commenters support the option of filing comments electronically and the availability of internet web sites that increase public access to information.

In the Notice, with regard to § 106.70, we also proposed to add that we may reject paper and electronic comments that are ''frivolous, abusive, or repetitious.'' Several commenters expressed concerns about the phrase ''frivolous, abusive, or repetitious.'' This proposed change was partially intended to address the types of comments the agency has received over the Internet that do not relate to a rulemaking. Commenters were concerned about the subjective nature of the proposed standard and about the possible rejection of comments under such a standard. A commenter asked, for example, whether a comment would be considered repetitious and rejected if it is the same or similar to one submitted by another commenter. All relevant comments will be considered, including those similar to those submitted by other commenters. We agree with commenters' concern about the proposed language and revised the language to state that we may reject comments not relevant to a rulemaking. Generally, all comments received will be part of the docket; however, comments that are not relevant to the rulemaking may not be considered for that particular rulemaking.

In §§ 106.80 through 106.90, we are using the terms ''public meetings'' rather than ''informal hearings.'' This language more accurately reflects the nature of these public, information-gathering sessions. One commenter requested confirmation that no present protections afforded to parties are reduced or eliminated by replacing the term ''informal hearings'' with ''public meetings.'' By replacing the term ''informal hearing'' with ''public meeting,'' no rights or protections are reduced or eliminated. The nature of the proceeding is unchanged. In a public meeting, interested parties may present information and arguments. RSPA officials preside over public meetings and keep a transcript or minutes.

In §§ 106.110 through 106.130, we are eliminating the petition for reconsideration procedures to streamline the appeal process. Commenters supported the proposed change for processing petitions for reconsideration and appeals to the Administrator, and stated that the change will simplify the process. DuPont stated that revising the petition for reconsideration procedures to effectively remove those from the process who cannot grant a petition in the first place results in a more efficient procedure.

Section 106.35 currently requires a person to file a petition for reconsideration of a rule with either RSPA's Associate Administrator for Hazardous Materials Safety or RSPA's Chief Counsel, depending on the subject matter of the regulation the person is challenging. Currently, § 106.38 then allows a person to appeal the decision of the Associate Administrator or the Chief Counsel to RSPA's Administrator. However, only the Administrator can issue a final rule. Consequently, the Associate Administrator does not have the authority to grant a petition for reconsideration that would result in issuance of a new final rule, only deny it. By eliminating the petition for reconsideration procedures, we are eliminating a step that procedurally cannot produce the end result often sought by the petitioner—a new final rule. Appeals will now be directly addressed to the Administrator. This change does not deprive anyone of the ability to appeal a final rule.

In this final rule, we are also further clarifying the RSPA actions that an interested person may appeal. In §§ 106.110–106.130, we are clarifying that you may appeal RSPA's withdrawal of a notice of proposed rulemaking, in addition to RSPA's issuance of a final rule.

Part 107

With the exception of the definitions in part 107, we are moving the rest of subpart A in part 107 to new part 105. The definitions section, § 107.3, remains in part 107 and is redesignated as § 107.1. We are replacing the definitions of ''approval,'' ''competent authority approval,'' ''exemption,'' ''filed,'' and ''person'' with definitions that we adopted in section 105.10.

With regard to the definition of ''Indian tribe,'' we are replacing the definition in part 107 with the statutory definition.

We are replacing the definition of ''state'' in part 107 with the definition of ''state'' found in § 171.8 because it is clear and simple.

With regard to the definition of ''transports'' or ''transportation,'' we are replacing the definition in part 107 with the current statutory definition.

Part 171

To make the definitions in § 171.8 consistent with the definitions in new part 105, we are replacing the definitions of ''approval,'' ''exemption,'' ''hazardous material,'' and ''person'' in § 171.8 with the new definitions we are adopting in § 105.10.

3. Regulatory Analysis and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866. Consequently, it was not reviewed by the Office of Management and Budget. RSPA has not prepared a regulatory impact analysis or a regulatory evaluation because this proposed rule has minimal economic impact. This rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

Executive Order 13132

RSPA has analyzed this rule in accordance with the principles and criteria in Executive Order 13132 (''Federalism''). RSPA has determined that the rule does not have sufficient Federalism impacts to warrant the preparation of a Federalism assessment.

Executive Order 13175

These clarified procedural regulations will not have substantial direct effects 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 when analyzed under the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), RSPA must consider whether a regulation would have a significant economic impact on a substantial number of small entities. This rule merely clarifies and revises RSPA's general procedures and rulemaking procedures to assist the public to better understand our procedures. Therefore, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. The information collection requirements in 49 CFR parts 106 and 107 have been approved under OMB Control No. 2137–0051, ''Rulemaking and Exemptions Petitions.'' This final rule does not impose new information collection requirements.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading of this document to cross-reference this action with the Unified Agenda.

Unfunded Mandates Reform Act

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

List of Subjects

49 CFR Part 105

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

Accordingly, RSPA amends 49 CFR chapter I, subchapter A, as follows:

1. Add part 105 to read as follows:

PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES

Subpart A—Definitions

Sec.

Subpart B—General Procedures

Obtaining Guidance and Public Information

Serving Documents

Subpoenas

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

Subpart A—Definitions

§ 105.5 Definitions

(a) This part contains the definitions for certain words and phrases used throughout this subchapter (49 CFR parts 105 through 110). At the beginning of each subpart, the Research and Special Programs Administration (''RSPA'' or ''we'') will identify the defined terms that are used within the subpart—by listing them—and refer the reader to the definitions in this part. This way, readers will know that RSPA has given a term a precise meaning and will know where to look for it.

(b) Terms used in this part are defined as follows:

Associate Administrator means Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

Approval means written consent, including a competent authority approval, from the Associate Administrator or other designated Department official, to perform a function that requires prior consent under subchapter C of this chapter (49 CFR parts 171 through 180).

Competent Authority means a national agency that is responsible, under its national law, for the control or regulation of some aspect of hazardous materials (dangerous goods) transportation. Another term for Competent Authority is ''Appropriate authority'' which is used in the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air. The Associate Administrator is the United States Competent Authority for purposes of 49 CFR part 107.

Competent Authority Approval means an approval by the competent authority that is required under an international standard (for example, the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air and the International Maritime Dangerous Goods Code). Any of the following may be considered a competent authority approval if it satisfies the requirement of an international standard:

(1) A specific regulation in subchapter A or C of this chapter.

(2) An exemption or approval issued under subchapter A or C of this chapter.

(3) A separate document issued to one or more persons by the Associate Administrator.

Exemption means a document issued by the Associate Administrator under the authority of 49 U.S.C. 5117. The document permits a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 *et seq.* (e.g., Federal Motor Carrier Safety routing requirements.)

Federal hazardous material transportation law means 49 U.S.C. 5101 *et seq.*

File or *Filed* means received by the appropriate RSPA or other designated office within the time specified in a regulation or rulemaking document.

Hazardous material means a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk

to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of this chapter.

Hazardous Materials Regulations or *HMR* means the regulations at 49 CFR parts 171 through 180.

Indian tribe has the same meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Person means an individual, firm, copartnership, corporation, company, association, or joint-stock association (including any trustee, receiver, assignee, or similar representative); or a government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) that transports a hazardous material to further a commercial enterprise or offers a hazardous material for transportation in commerce. Person does not include the following:

(1) The United States Postal Service.

(2) Any agency or instrumentality of the Federal government, for the purposes of 49 U.S.C. 5123 (civil penalties) and 5124 (criminal penalties).

(3) Any government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) that transports hazardous material for a governmental purpose.

Political subdivision means a municipality; a public agency or other instrumentality of one or more States, municipalities, or other political body of a State; or a public corporation, board, or commission established under the laws of one or more States.

Preemption determination means an administrative decision by the Associate Administrator that Federal hazardous materials law does or does not void a specific State, political subdivision, or Indian tribe requirement.

Regulations issued under Federal hazardous materials transportation law means regulations contained in subchapter A of this chapter (49 CFR parts 105 through 110) and in subchapter C of this chapter (49 CFR parts 171 through 180).

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary.

Transports or *Transportation* means the movement of property and loading, unloading, or storage incidental to the movement.

Waiver of Preemption means a decision by the Associate Administrator to forego preemption of a non-Federal requirement—that is, to allow a State, political subdivision or Indian tribe requirement to remain in effect. The non-Federal requirement must provide at least as much public protection as the Federal hazardous materials transportation law and the regulations issued under Federal hazardous materials transportation law, and may not unreasonably burden commerce.

Subpart B—General Procedures

§ 105.15 Defined terms used in this subpart.

The following defined terms (see subpart A of this part) appear in this subpart: Approval; Exemption; Federal hazardous material transportation law; Hazardous material; Hazardous materials regulations; Indian tribe; Preemption determination; State; Transportation; Waiver of preemption

Obtaining Guidance and Public Information

§ 105.20 Guidance and interpretations.

(a) *Hazardous materials regulations.* You can obtain information and answers to your questions on compliance with the hazardous materials regulations (49 CFR parts 171 through 180) and interpretations of those regulations by contacting RSPA's Office of Hazardous Materials Safety as follows:

(1) Call the Hazardous Materials Information Center at 1–800–467–4922 (in Washington, DC, call 202–366–4488). The Center is staffed from 9 a.m. through 5 p.m. Eastern time, Monday through Friday except Federal holidays. After hours, you can leave a recorded message and your call will be returned by the next business day.

(2) E-mail the Hazardous Materials Information Center at *infocntr@rspa.dot.gov.*

(3) Access the Office of Hazardous Materials Safety home page via the Internet at *http://hazmat.dot.gov.*

(4) Send a letter, with your return address and a daytime telephone number, to: Office of Hazardous Materials Standards, Research and Special Programs Administration, Attn: DHM–10, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590–0001.

(b) *Federal hazardous materials transportation law and preemption.* You can obtain information and answers to your questions on Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.*, and Federal preemption of State, local, and Indian tribe hazardous material transportation requirements, by contacting RSPA's Office of the Chief Counsel as follows:

(1) Call the office of the Chief Counsel at (202) 366–4400 from 9 a.m. to 5 p.m. Eastern time, Monday through Friday except Federal holidays.

(2) Access the Office of the Chief Counsel's home page via the Internet at *http://rspa-atty.dot.gov.*

(3) Send a letter, with your return address and a daytime telephone number, to: Office of the Chief Counsel, Research and Special Programs Administration, Attn: DCC–10, U.S. Department of Transportation, Washington, DC 20590–0001.

(4) Contact the Office of the Chief Counsel for a copy of applications for preemption determinations, waiver of preemption determinations, and inconsistency rulings received by RSPA before February 1, 1997.

§ 105.25 Reviewing public documents.

RSPA is required by statute to make certain documents and information available to the public. You can review and copy publicly available documents and information at the locations described in this section.

(a) *DOT Docket Management System.* Unless a particular document says otherwise, the following documents are available for public review and copying at the Department of Transportation's Docket Management System, Room PL 401, 400 7th Street, SW., Washington, DC 20590–0001, or for review and downloading through the Internet at *http://dms.dot.gov:*

(1) Rulemaking documents in proceedings started after February 1, 1997, including notices of proposed rulemaking, advance notices of proposed rulemaking, public comments, related **Federal Register** notices, final rules, appeals, and RSPA's decisions in response to appeals.

(2) Applications for exemption received by RSPA after February 1, 1997. Also available are supporting data, memoranda of any informal meetings with applicants, related **Federal Register** notices, public comments, and decisions granting or denying exemptions applications.

(3) Applications for preemption determinations and waiver of preemption determinations received by RSPA after February 1, 1997. Also available are public comments, **Federal**

Register notices, and RSPA's rulings, determinations, decisions on reconsideration, and orders issued in response to those applications.

(b) *Hazardous Materials Record Center.* Applications for exemptions and related background information received by RSPA before February 1, 1997 are available for public review and copying at the Hazardous Materials Record Center, U.S. Department of Transportation, Room 8421, 400 7th Street, SW., Washington, DC 20590–0001:

(c) *Office of Hazardous Materials Safety.* (1) You may obtain documents (e.g., proposed and final rules, notices, letters of clarification, safety notices, DOT forms and other documents) by using the ''Fax On Demand'' system. To reach the ''Fax On Demand'' system, dial 1–800–467–4922 and select Option 2. You may choose documents to be faxed to your machine.

(2) Upon your written request, we will make the following documents and information available to you:

(i) Appeals under 49 CFR part 107 and RSPA's decisions issued in response to those appeals.

(ii) Records of compliance order proceedings and RSPA compliance orders.

(iii) Applications for approvals, including supporting data, memoranda of any informal meetings with applicants, and decisions granting or denying approvals applications.

(iv) Other information about RSPA's hazardous materials program required by statute to be made available to the public for review and copying and any other information RSPA decides should be available to the public.

(3) Your written request to review documents should include the following:

(i) A detailed description of the documents you wish to review.

(ii) Your name, address, and telephone number.

(4) Send your written request to: Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, Attn: DHM–1, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001.

§ 105.26 Obtaining records on file with RSPA.

To obtain records on file with RSPA, other than those described in § 105.25, you must file a request with RSPA under the Freedom of Information Act (FOIA) (5 U.S.C. 552). The procedures for filing a FOIA request are contained in 49 CFR part 7.

§ 105.30 Information made available to the public and request for confidential treatment.

When you submit information to RSPA during a rulemaking proceeding, as part of your application for exemption or approval, or for any other reason, we may make that information publicly available unless you ask that we keep the information confidential.

(a) *Asking for confidential treatment.* You may ask us to give confidential treatment to information you give to the agency by taking the following steps:

(1) Mark ''confidential'' on each page of the original document you would like to keep confidential.

(2) Send us, along with the original document, a second copy of the original document with the confidential information deleted.

(3) Explain why the information you are submitting is confidential (for example, it is exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. 552 or it is information referred to in 18 U.S.C. 1905).

(b) *RSPA Decision.* RSPA will decide whether or not to treat your information as confidential. We will notify you, in writing, of a decision to grant or deny confidentiality at least five days before the information is publicly disclosed, and give you an opportunity to respond.

Serving Documents

§ 105.35 Serving documents in RSPA proceedings.

(a) *Service by RSPA.* We may serve the document by one of the following methods, except where a different method of service is specifically required:

(1) Registered or certified mail.

(i) If we serve a document by registered or certified mail, it is considered served when mailed.

(ii) An official United States Postal Service receipt from the registered or certified mailing is proof of service.

(iii) We may serve a person's authorized representative or agent by registered or certified mail, or in any other manner authorized by law. Service on a person's authorized agent is the same as service on the person.

(2) Personal service.

(3) Publication in the **Federal Register.**

(b) *Service by others.* If you are required under this subchapter to serve a person with a document, serve the document by one of the following methods, except where a different method of service is specifically required:

(1) Registered or certified mail.

(i) If you serve a document by registered or certified mail, it is considered served when mailed.

(ii) An official United States Postal Service receipt from the registered or certified mailing is proof of service.

(iii) You may serve a person's authorized representative or agent by registered or certified mail or in any other manner authorized by law. Service on a person's authorized agent is the same as service on the person.

(2) Personal service.

(3) Electronic service.

(i) In a proceeding under § 107.317 of this subchapter (an administrative law judge proceeding), you may electronically serve documents on us.

(ii) Serve documents electronically through the Internet at *http://dms.dot.gov.*

§ 105.40 Designated agents for non-residents.

(a) *General requirement.* If you are not a resident of the United States but are required by this subchapter or subchapter C of this chapter to designate a permanent resident of the United States to act as your agent and receive documents on your behalf, you must prepare a designation and file it with us.

(b) *Agents.* An agent:

(1) May be an individual, a firm, or a domestic corporation.

(2) May represent any number of principals.

(3) May not reassign responsibilities under a designation to another person.

(c) *Preparing a designation.* Your designation must be written and dated, and it must contain the following information:

(1) The section in the HMR that requires you to file a designation.

(2) A certification that the designation is in the correct legal form required to make it valid and binding on you under the laws, corporate bylaws, and other requirements that apply to designations at the time and place you are making the designation.

(3) Your full legal name, the principal name of your business, and your mailing address.

(4) A statement that your designation will remain in effect until you withdraw or replace it.

(5) The legal name and mailing address of your agent.

(6) A declaration of acceptance signed by your agent.

(d) *Address.* Send your designation to:

Office of Hazardous Materials Exemptions and Approvals Research and Special Programs Administration, Attn: DHM–30, U.S. Department of Transportation 400 7th Street, SW., Washington, DC 20590–0001.

(e) *Designations are binding.* You are bound by your designation of an agent, even if you did not follow all the requirements in this section, until we reject your designation.

Subpoenas

§ 105.45 Issuing a subpoena.

(a) *Subpoenas explained.* A subpoena is a document that may require you to attend a proceeding, produce documents or other physical evidence in your possession or control, or both. RSPA may issue a subpoena either on its initiative or at the request of someone participating in a proceeding. Anyone who requests that RSPA issue a subpoena must show that the subpoena seeks information that will materially advance the proceeding.

(b) *Attendance and mileage expenses.*

(1) If you receive a subpoena to attend a proceeding under this part, you may receive money to cover attendance and mileage expenses. The attendance and mileage fees will be the same as those paid to a witness in a proceeding in the district courts of the United States.

(2) If RSPA issues a subpoena to you based upon a request, the requester must serve a copy of the original subpoena on you, as required in § 105.50. The requester must also include attendance and mileage fees with the subpoena unless the requester asks RSPA to pay the attendance and mileage fees because of demonstrated financial hardship and RSPA agrees to do so.

(3) If RSPA issues a subpoena at the request of an officer or agency of the Federal government, the officer or agency is not required to include attendance and mileage fees when serving the subpoena. The officer or agency must pay the fees before you leave the hearing at which you testify.

§ 105.50 Serving a subpoena.

(a) *Personal service.* Anyone who is not an interested party and who is at least 18 years of age may serve you with a subpoena and fees by handing the subpoena and fees to you, by leaving them at your office with the individual in charge, or by leaving them at your house with someone who lives there and is capable of making sure that you receive them. If RSPA issues a subpoena to an entity, rather than an individual, personal service is made by delivering the subpoena and fees to the entity's registered agent for service of process or to any officer, director or agent in charge of any of the entity's offices.

(b) *Service by mail.* You may be served with a copy of a subpoena and fees by certified or registered mail at your last known address. Service of a subpoena and fees may also be made by registered or certified mail to your agent for service of process or any of your representatives at that person's last known address.

(c) *Other methods.* You may be served with a copy of a subpoena by any method where you receive actual notice of the subpoena and receive the fees before leaving the hearing at which you testify.

(d) *Filing after service.* After service is complete, the individual who served a copy of a subpoena and fees must file the original subpoena and a certificate of service with the RSPA official who is responsible for conducting the hearing.

§ 105.55 Refusal to obey a subpoena.

(a) *Quashing or modifying a subpoena.* If you receive a subpoena, you can ask RSPA to overturn (''quash'') or modify the subpoena within 10 days after the subpoena is served on you. Your request must briefly explain the reasons you are asking for the subpoena to be quashed or modified. RSPA may then do the following:

(1) Deny your request.

(2) Quash or modify the subpoena.

(3) Grant your request on the condition that you satisfy certain specified requirements.

(b) *Failure to obey.* If you disobey a subpoena, RSPA may ask the Attorney General to seek help from the United States District Court for the appropriate District to compel you, after notice, to appear before RSPA and give testimony, produce subpoenaed documents or physical evidence, or both.

2. Revise part 106 to read as follows:

PART 106—RULEMAKING PROCEDURES

Subpart A—RSPA Rulemaking Documents

Subpart B—Participating in the Rulemaking Process

Written Comments

Public Meetings and Other Proceedings

Petitions for Rulemaking

Appeals

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

Subpart A—RSPA Rulemaking Documents

§ 106.5 Defined terms used in this subpart.

The following defined terms (see part 105, subpart A, of this subchapter) appear in this subpart: File; Person; State.

§ 106.10 Process for issuing rules.

(a) RSPA (''we'') uses informal rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 553) to add, amend, or delete regulations. To propose or adopt changes to a regulation, RSPA may issue one or more of the following documents. We publish the following rulemaking documents in the **Federal Register** unless we name and personally serve a copy of a rule on every person subject to it:

(1) An advance notice of proposed rulemaking.

(2) A notice of proposed rulemaking.

(3) A final rule.

(4) An interim final rule.

(5) A direct final rule.

(b) Each of the rulemaking documents in paragraph (a) of this section generally contains the following information:

(1) The topic involved in the rulemaking document.

(2) RSPA's legal authority for issuing the rulemaking document.

(3) How interested persons may participate in the rulemaking proceeding (for example, by filing written comments or making oral presentations).

(4) Whom to call if you have questions about the rulemaking document.

(5) The date, time, and place of any public meetings being held to discuss the rulemaking document.

(6) The docket number and regulation identifier number (RIN) for the rulemaking proceeding.

§ 106.15 Advance notice of proposed rulemaking.

An advance notice of proposed rulemaking (ANPRM) tells the public that RSPA is considering an area for rulemaking and requests written comments on the appropriate scope of the rulemaking or on specific topics. An advance notice of proposed rulemaking may or may not include the text of potential changes to a regulation.

§ 106.20 Notice of proposed rulemaking.

A notice of proposed rulemaking (NPRM) contains RSPA's specific proposed regulatory changes for public comment and contains supporting information. It generally includes proposed regulatory text.

§ 106.25 Revising regulations without first issuing an ANPRM or NPRM.

RSPA may add, amend, or delete regulations without first issuing an ANPRM or NPRM in the following situations:

(a) We may go directly to a final rule or interim final rule if, for good cause, we find that a notice of proposed rulemaking is impracticable, unnecessary, or contrary to the public interest. We must place that finding and a brief statement of the reasons for it in the final rule or interim final rule.

(b) We may issue a direct final rule (see § 106.40).

§ 106.30 Final rule.

A final rule sets out new regulatory requirements and their effective date. A final rule will also identify issues raised by commenters in response to the notice of proposed rulemaking and give the agency's response.

§ 106.35 Interim final rule.

An interim final rule is issued without first issuing a notice of proposed rulemaking and accepting public comments and sets out new regulatory requirements and their effective date. RSPA may issue an interim final rule if it finds, for good cause, that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. RSPA will clearly set out this finding in the interim final rule. After receiving and reviewing public comments, as well as any other relevant documents, RSPA may revise the interim final rule and then issue a final rule.

§ 106.40 Direct final rule.

A direct final rule makes regulatory changes and states that the regulatory changes will take effect on a specified date unless RSPA receives an adverse comment or notice of intent to file an adverse comment within the comment period—generally 60 days after the direct final rule is published in the **Federal Register**.

(a) *Actions taken by direct final rule.* We may use direct final rulemaking procedures to issue rules that do any of the following:

(1) Make minor substantive changes to regulations.

(2) Incorporate by reference the latest edition of technical or industry standards.

(3) Extend compliance dates.

(4) Make noncontroversial changes to regulations. We must determine and publish a finding that use of direct final rulemaking, in this situation, is in the public interest and unlikely to result in adverse comment.

(b) *Adverse comment.* An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule's underlying premise or approach. Under the direct final rule process, we do not consider the following types of comments to be adverse:

(1) A comment recommending another rule change, in addition to the change in the direct final rule at issue, unless the commenter states why the direct final rule would be ineffective without the change.

(2) A frivolous or irrelevant comment.

(c) *Confirmation of effective date.* We will publish a confirmation document in the **Federal Register**, generally within 15 days after the comment period closes, if we have not received an adverse comment or notice of intent to file an adverse comment. The confirmation document tells the public the effective date of the rule—either the date stated in the direct final rule or at least 30 days after the publication date of the confirmation document, whichever is later.

(d) *Withdrawing a direct final rule.* (1) If we receive an adverse comment or notice of intent to file an adverse comment, we will publish a document in the **Federal Register** before the effective date of the direct final rule advising the public and withdrawing the direct final rule in whole or in part.

(2) If we withdraw a direct final rule because of an adverse comment, we may incorporate the adverse comment into a later direct final rule or may publish a notice of proposed rulemaking.

(e) *Appeal.* You may appeal RSPA's issuance of a direct final rule (see § 106.115) only if you have previously filed written comments (see § 106.60) to the direct final rule.

§ 106.45 Tracking rulemaking actions.

The following identifying numbers allow you to track RSPA's rulemaking activities:

(a) *Docket number.* We assign an identifying number, called a docket number, to each rulemaking proceeding. Each rulemaking document that RSPA issues in a particular rulemaking proceeding will display the same docket number. This number allows you to do the following:

(1) Associate related documents that appear in the **Federal Register**.

(2) Search the DOT Docket Management System (''DMS'') for information on particular rulemaking proceedings—including notices of proposed rulemaking, public comments, petitions for rulemaking, appeals, records of additional rulemaking proceedings and final rules. There are two ways you can search the DMS:

(i) Visit the public docket room and review and copy any docketed materials during regular business hours. The DOT Docket Management System is located at the U.S. Department of Transportation, Plaza Level 401, 400 7th Street, SW., Washington, DC 20590–0001.

(ii) View and download docketed materials through the Internet at *http://dms.dot.gov.*

(b) *Regulation identifier number.* The Department of Transportation publishes a semiannual agenda of all current and projected Department of Transportation rulemakings, reviews of existing regulations, and completed actions. This semiannual agenda appears in the Unified Agenda of Federal Regulations that is published in the **Federal Register** in April and October of each year. The semiannual agenda tells the public about the Department's—including RSPA's—regulatory activities. The Department assigns a regulation identifier number (RIN) to each individual rulemaking proceeding in the semiannual agenda. This number appears on all rulemaking documents published in the **Federal Register** and makes it easy for you to track those rulemaking proceedings in both the **Federal Register** and the semiannual regulatory agenda itself, as well as to locate all documents in the Docket Management System pertaining to a particular rulemaking.

Subpart B—Participating in the Rulemaking Process

§ 106.50 Defined terms used in this subpart.

The following defined terms (see part 105, subpart A, of this subchapter)

appear in this subpart: File; Person; Political subdivision; State.

§ 106.55 Public participation in the rulemaking process.

You may participate in RSPA's rulemaking process by doing any of the following:

(a) File written comments on any rulemaking document that asks for comments, including an advance notice of proposed rulemaking, notice of proposed rulemaking, interim final rule, or direct final rule.

(b) Ask that we hold a public meeting in any rulemaking proceeding and participate in any public meeting that we hold.

(c) File a petition for rulemaking that asks us to add, amend, or delete a regulation.

(d) File an appeal that asks us to reexamine our decision to issue all or part of a final rule, interim final rule, or direct final rule.

Written Comments

§ 106.60 Filing comments.

Anyone may file written comments about proposals made in any rulemaking document that requests public comments, including any State government agency, any political subdivision of a State, and any interested person invited by RSPA to participate in the rulemaking process.

§ 106.65 Required information for written comments.

Your comments must be in English and must contain the following:

(a) The docket number of the rulemaking document you are commenting on, clearly set out at the beginning of your comments.

(b) Information, views, or arguments that follow the instructions for participation that appear in the rulemaking document on which you are commenting.

(c) All material that is relevant to any statement of fact in your comments.

(d) The document title and page number of any material that you reference in your comments.

§ 106.70 Where and when to file comments.

(a) Unless you are told to do otherwise in the rulemaking document on which you are commenting, send your comments to us in either of the following ways:

(1) By mail to: Docket Management System, U.S. Department of Transportation, Room PL 401, Washington, DC 20590–0001.

(2) Through the Internet to *http://dms.dot.gov.*

(b) Make sure that your comments reach us by the deadline set out in the rulemaking document on you which are commenting. We will consider late-filed comments to the extent possible.

(c) We may reject comments that are not relevant to the rulemaking. We may reject comments you file electronically if you do not follow the electronic filing instructions at the DOT Web site.

§ 106.75 Extension of time to file comments.

You may ask for more time to file comments on a rulemaking proceeding. If RSPA grants your request, it is granted to all persons. We will notify the public of the extension by publishing a document in the **Federal Register**. If RSPA denies your request, RSPA will notify you of the denial. To ask for more time, you must do the following:

(a) File a request for extension at least ten days before the end of the comment period established in the rulemaking document.

(b) Show that you have good cause for the extension and that an extension is in the public interest.

(c) Include the docket number of the rulemaking document you are seeking additional time to comment on, clearly set out at the beginning of your request.

(d) Send your request to: Docket Management System, U.S. Department of Transportation, Room PL 401, 400 7th Street, SW., Washington, DC 20590–0001.

Public Meetings and Other Proceedings

§ 106.80 Public meeting procedures.

A public meeting is a non-adversarial, fact-finding proceeding conducted by a RSPA representative. Generally, public meetings are announced in the **Federal Register**. Interested persons are invited to attend and to present their views to the agency on specific issues. There are no formal pleadings and no adverse parties, and any regulation issued afterward is not necessarily based exclusively on the record of the meeting. Sections 556 and 557 of the Administrative Procedure Act (5 U.S.C. 556 and 557) do not apply to public meetings under this part.

§ 106.85 Requesting a public meeting.

(a) You may ask for a public meeting by filing a written request with RSPA no later than 20 days before the expiration of the comment period specified in the rulemaking document. Send your request for a public meeting to: Docket Management System, U.S. Department of Transportation, Room PL 401, 400 7th Street, SW., Washington, DC 20590–0001.

(b) RSPA will review your request and, if you have shown good cause for a public meeting, we will grant it and publish a notice of the meeting in the **Federal Register**.

§ 106.90 Other rulemaking proceedings.

During a rulemaking proceeding, RSPA may invite you to do the following:

(a) Participate in a conference at which minutes are taken.

(b) Make an oral presentation.

(c) Participate in any other public proceeding to ensure that RSPA makes informed decisions during the rulemaking process and to protect the public interest, including a negotiated rulemaking or work group led by a facilitator.

Petitions for Rulemaking

§ 106.95 Requesting a change to the regulations.

You may ask RSPA to add, amend, or delete a regulation by filing a petition for rulemaking as follows:

(a) For regulations in 49 CFR parts 110, 130, 171 through 180, submit the petition to: Office of Hazardous Materials Standards, Research and Special Programs Administration, Attn: DHM–10, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001.

(b) For regulations in 49 CFR parts 105, 106, or 107, submit the petition to: Office of the Chief Counsel, Research and Special Programs Administration, Attn: DCC–10, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001.

§ 106.100 Required information for a petition for rulemaking.

(a) You must include the following information in your petition for rulemaking:

(1) A summary of your proposed action and an explanation of its purpose.

(2) The language you propose for a new or amended rule, or the language you would delete from a current rule.

(3) An explanation of your interest in your proposed action and the interest of anyone you may represent.

(4) Information and arguments that support your proposed action, including relevant technical and scientific data available to you.

(5) Any specific cases that support or demonstrate the need for your proposed action.

(b) If the impact of your proposed action is substantial, and data or other information about that impact are available to you, we may ask that you provide information about the following:

(1) The costs and benefits of your proposed action to society in general, and identifiable groups within society in particular.

(2) The direct effects, including preemption effects under section 5125 of Federal hazardous materials transportation law, of your proposed action on States, on the relationship between the Federal government and the States, and on the distribution of power and responsibilities among the various levels of government. (See 49 CFR part 107, subpart C, regarding preemption.)

(3) The regulatory burden of your proposed action on small businesses, small organizations, small governmental jurisdictions, and Indian tribes.

(4) The recordkeeping and reporting burdens of your proposed action and whom they would affect.

(5) The effect of your proposed action on the quality of the natural and social environments.

§ 106.105 RSPA response to a petition for rulemaking.

We will review and respond to your petition for rulemaking as follows:

If your petition is . . .	And if we determine that . . .	Then . . .
(a) Incomplete		We may return your petition with a written explanation.
(b) Complete	Your petition does not justify a rulemaking action.	We will notify you in writing that we will not start a rulemaking proceeding.
(c) Complete	Your petition does justify a rulemaking action	We will notify you in writing that we will start a rulemaking proceeding.

Appeals

§ 106.110 Appealing a RSPA Action.

You may appeal the following RSPA actions:

(a) RSPA's issuance of a final rule or RSPA's withdrawal of a notice of proposed rulemaking under the rulemaking procedures in this part. However, you may appeal RSPA's issuance of a direct final rule only if you previously filed comments to the direct final rule (see § 106.40(e)).

(b) Any RSPA decision on a petition for rulemaking.

§ 106.115 Required information for an appeal.

(a) *Appeal of a final rule or withdrawal of a notice of proposed rulemaking.* If you appeal RSPA's issuance of a final rule or RSPA's withdrawal of a notice of proposed rulemaking, your appeal must include the following:

(1) The docket number of the rulemaking you are concerned about, clearly set out at the beginning of your appeal.

(2) A brief statement of your concern about the final rule or the withdrawal of notice of proposed rulemaking at issue.

(3) An explanation of why compliance with the final rule is not practical, reasonable, or in the public interest.

(4) If you want RSPA to consider more facts, the reason why you did not present those facts within the time given during the rulemaking process for public comment.

(b) *Appeal of a decision.* If you appeal RSPA's decision on a petition for rulemaking, you must include the following:

(1) The contested aspects of the decision.

(2) Any new arguments or information.

§ 106.120 Appeal deadline.

(a) *Appeal of a final rule or withdrawal of a notice of proposed rulemaking.* If you appeal RSPA's issuance of a final rule or RSPA's withdrawal of a proposed rulemaking, your appeal document must reach us no later than 30 days after the date RSPA published the regulation or the withdrawal notice in the **Federal Register**. After that time, RSPA will consider your petition to be one for rulemaking under § 106.100.

(b) *Appeal of a decision.* If you appeal RSPA's decision on a petition for rulemaking, your appeal document must reach us no later than 30 days from the date RSPA served you with written notice of RSPA's decision.

§ 106.125 Filing an appeal.

Send your appeal to: Docket Management System, U.S. Department of Transportation, Room PL 401, 400 7th Street, SW., Washington, DC 20590–0001.

§ 106.130 RSPA response to an appeal.

Unless RSPA provides otherwise, filing an appeal will not keep a final rule from becoming effective. We will handle an appeal according to the following procedures:

(a) *Appeal of a final rule or withdrawal of a notice of proposed rulemaking.* (1) We may consolidate your appeal with other appeals of the same rule.

(2) We may grant or deny your appeal, in whole or in part, without further rulemaking proceedings, unless granting your appeal would result in the issuance of a new final rule.

(3) If we decide to grant your appeal, we may schedule further proceedings and an opportunity to comment.

(4) RSPA will notify you, in writing, of the action on your appeal within 90 days after the date that RSPA published the final rule or withdrawal of notice of proposed rulemaking at issue in the **Federal Register**. If we do not issue a decision on your appeal within the 90-day period and we anticipate a substantial delay, we will notify you directly about the delay and will give you an expected decision date. We will also publish a notice of the delay in the **Federal Register**.

(b) *Appeal of a decision.* (1) We will not consider your appeal if it merely repeats arguments that RSPA has previously rejected.

(2) RSPA will notify you, in writing, of the action on your appeal within 90 days after the date that RSPA served you with written notice of its decision on your petition for rulemaking. If we do not issue a decision on your appeal within the 90-day period, and we anticipate a substantial delay, we will notify you directly about the delay and will give you an expected decision date.

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

3. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

4. The heading for subpart A is revised to read as follows:

Subpart A—Definitions

§§ 107.1, 107.5, 107.7, 107.9, 107.11, 107.13, 107.14 [Removed]

5. Sections 107.1, 107.5, 107.7, 107.9, 107.11, 107.13, and 107.14 are removed.

6. Section 107.3 is redesignated as § 107.1 and, in newly redesignated § 107.1, the definitions for ''Approval,'' ''Competent Authority,'' ''Competent Authority Approval,'' ''Exemption,'' ''Filed,'' ''Indian Tribe,'' ''Person,'' ''State,'' and ''Transports or transportation'' are revised to read as follows:

§ 107.1 Definitions.

* * * * *

Approval means written consent, including a competent authority approval, from the Associate Administrator or other designated Department official, to perform a function that requires prior consent under subchapter C of this chapter (49 CFR parts 171 through 180).

* * * * *

Competent Authority means a national agency that is responsible, under its national law, for the control or regulation of some aspect of hazardous materials (dangerous goods) transportation. Another term for Competent Authority is ''Appropriate authority,'' which is used in the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air. The Associate Administrator is the United States Competent Authority for purposes of this part 107.

Competent Authority Approval means an approval by the competent authority that is required under an international standard (for example, the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air and the International Maritime Dangerous Goods Code). Any of the following may be considered a competent authority approval if it satisfies the requirement of an international standard:

(1) A specific regulation in subchapter A or C of this chapter.

(2) An exemption or approval issued under subchapter A or C of this chapter.

(3) A separate document issued to one or more persons by the Associate Administrator.

* * * * *

Exemption means a document issued by the Associate Administrator under the authority of 49 U.S.C. 5117. The document permits a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 through 5127 (e.g., Federal Motor Carrier Safety routing requirements.)

* * * * *

Filed means received by the appropriate RSPA or other designated office within the time specified in a regulation or rulemaking document.

* * * * *

Indian Tribe has the same meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

* * * * *

Person means an individual, firm, copartnership, corporation, company, association, or joint-stock association (including any trustee, receiver, assignee, or similar representative); or a government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) that transports a hazardous material to further a commercial enterprise or offers a hazardous material for transportation in commerce. Person does not include the following:

(1) The United States Postal Service.

(2) Any agency or instrumentality of the Federal government, for the purposes of 49 U.S.C. 5123 (civil penalties) and 5124 (criminal penalties.)

(3) Any government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) that transports hazardous material for a governmental purpose.

* * * * *

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary.

Transports or *transportation* means the movement of property and loading, unloading, or storage incidental to the movement.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

7. The authority citation for part 171 continues to read as follows:

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

8. In § 171.8, the definitions for ''Approval,'' ''Exemption,'' ''Hazardous material,'' and ''Person'' are revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Approval means a written authorization, including a competent authority approval, from the Associate Administrator or other designated Department official, to perform a function for which prior authorization by the Associate Administrator is required under subchapter C of this chapter (49 CFR parts 171 through 180.)

* * * * *

Exemption means a document issued by the Associate Administrator under the authority of 49 U.S.C. 5117. The document permits a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 through 5127 (e.g., Federal Motor Carrier Safety routing).

* * * * *

Hazardous material means a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of this chapter.

* * * * *

Person means an individual, firm, copartnership, corporation, company, association, or joint-stock association (including any trustee, receiver, assignee, or similar representative); or a government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) that transports a hazardous material to further a commercial enterprise or offers a hazardous material for transportation in commerce. Person does not include the following:

(1) The United States Postal Service.

(2) Any agency or instrumentality of the Federal government, for the purposes of 49 U.S.C. 5123 (civil penalties) and 5124 (criminal penalties.).

(3)Any government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) that transports hazardous material for a governmental purpose.

* * * * *

Issued at Washington, DC, on May 30, 2002, under authority delegated in 49 CFR part 106.

Suzanne M. Te Beau,

Acting Administrator.

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Part VI

Department of Health and Human Services

42 CFR Part 83

Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 83

RIN 0920–AA07

Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Notice of Proposed Rulemaking

AGENCY: Department of Health and Human Services.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document describes how the Department of Health and Human Services (''HHS'') proposes to consider designating additional classes of employees to be added to the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000 (''EEOICPA''). Under EEOICPA, and Executive Order 13179, the Secretary of HHS is authorized to make such designations, which take effect 180 days after Congress is notified unless Congress provides otherwise. An individual member (or the survivors of a member) of a class of employees added to the Special Exposure Cohort would be entitled to compensation if the Department of Labor (''DOL'') finds that employee incurred a specified cancer and the claim meets other requirements established under EEOICPA.

DATES: HHS invites comments on this notice of proposed rulemaking from interested parties. Comments must be received by August 26, 2002.

ADDRESSES: Address written comments on the notice of proposed rulemaking to the NIOSH Docket Officer. Submit comments electronically by e-mail to *NIOCINDOCKET@CDC.GOV*. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. Alternatively, submit printed comments to NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS–R45, Cincinnati, OH 45226, Telephone 513–841–4498 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested persons or organizations are invited to participate in this rulemaking by submitting written views, arguments, recommendations, and data. Comments are invited on any topic related to this proposal. Some specific topics for comment are identified under section III, which summarizes the proposed procedures.

Comments should identify the author(s), return address, and phone number, in case clarification is needed. Comments can be submitted by e-mail to: *NIOCINDOCKET@CDC.GOV*. If submitting comments by e-mail, they may be provided as e-mail text or as a Word or Word Perfect file attachment. Printed comments can also be submitted to the address above. All communications received on or before the closing date for comments will be fully considered by the Secretary. An electronic docket containing all comments submitted will be available online over the Internet on the National Institute for Occupational Safety and Health (''NIOSH'') homepage at *http://www.cdc.gov/niosh*.

II. Background

A. Statutory Authority

The Energy Employees Occupational Illness Compensation Program Act, 42 U.S.C. §§ 7384–7385 [1994, supp. 2001]. EEOICPA established a compensation program to provide a lump sum payment of $150,000 and prospective medical benefits as compensation to covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy (''DOE'') and certain of its vendors, contractors and subcontractors. This legislation also provided for payment of compensation for certain survivors of these covered employees.

EEOICPA instructed the President to designate one or more Federal Agencies to carry out the compensation program. Pursuant to this statutory provision, the President issued Executive Order 13179 (''Providing Compensation to America's Nuclear Weapons Workers'') which assigned primary responsibility for administering the compensation program to the Department of Labor (''DOL''). 65 FR 77487 (December 7, 2000). DOL published an interim final rule governing DOL's administration of EEOICPA on May 25, 2001 (66 FR 28948).

The executive order directed the HHS to perform several technical and policymaking roles in support of the DOL program:

(1) HHS is to develop procedures for considering petitions to be added to the Special Exposure Cohort established under EEOICPA by classes of employees at DOE and Atomic Weapons Employer (''AWE'') facilities. HHS is also to apply these procedures in response to such petitions. Covered employees (and certain eligible survivors) included in the Special Exposure Cohort who have a specified cancer qualify for compensation under EEOICPA. The procedures HHS is proposing to use for considering Special Exposure Cohort petitions are the subject of this notice of proposed rulemaking.

(2) HHS is to develop guidelines by regulation to be used by DOL to assess the likelihood that an employee with cancer developed that cancer as a result of exposure to radiation in performing his or her duty at a DOE or AWE facility. HHS published a notice of proposed rulemaking proposing these ''Probability of Causation'' guidelines on October 5, 2001 (66 FR 50967) and published a final rule on May 2, 2002 (67 FR 22296).

(3) HHS is also to develop methods by regulation to estimate radiation doses (''dose reconstruction'') for certain individuals with cancer applying for benefits under the DOL program. HHS published an interim final rule promulgating these methods under 42 CFR Part 82 on October 5, 2001 (66 FR 50978) and published a final rule on May 2, 2002 (67 FR 22314). HHS is applying these methods to conduct the program of dose reconstruction required by EEOICPA.

(4) Finally, HHS is to staff the Advisory Board on Radiation and Worker Health and provide it with administrative and other necessary support services. The Board, a federal advisory committee, will advise HHS in implementing its roles under EEOICPA described here.

42 U.S.C. 7384p requires HHS to implement its responsibilities with the assistance of the National Institute for Occupational Safety and Health (NIOSH), an Institute of the Centers for Disease Control and Prevention, HHS.

B. What Is the Special Exposure Cohort?

The Special Exposure Cohort (''the Cohort'') is a category of employees defined under 42 U.S.C. 7384l(14). EEOICPA specifies which employees comprise the Cohort initially, including employees of DOE, DOE contractors or subcontractors, or AWEs who worked an aggregate of at least 250 days before February 1, 1992 at a gaseous diffusion plant in (1) Paducah, Kentucky, (2) Portsmouth, Ohio, or (3) Oak Ridge, Tennessee and who were or could have

been monitored in those jobs using dosimetry badges; or (4) employees of DOE or DOE contractors or subcontractors employed before January 1, 1974 on Amchitka Island, Alaska and exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests. Employees included in the Cohort who incur a specified cancer [1] qualify for compensation (see DOL regulations 20 CFR 30 at 66 FR 28948 for details). Cancer claims submitted by these employees or their survivors do not require DOL to evaluate the probability that the cancer was caused by radiation doses incurred during the performance of duty for nuclear weapons programs of DOE, as is required for other cancer claims covered by EEOICPA.

C. Purpose of the Proposed Procedures

EEOICPA authorized the President to designate classes of employees to be added to the Cohort, while providing Congress with the opportunity to review these decisions and prevent their implementation. As noted previously, the President has delegated his authority in this matter to the Secretary of HHS. The purpose of this notice of proposed rulemaking is to establish procedures by which the Secretary of HHS will determine whether to add to the Cohort new classes of employees from DOE and AWE facilities. The procedures are intended to ensure that petitions for additions to the Cohort are given uniform, fair, scientific consideration, that petitioners and interested parties are provided opportunity for appropriate involvement in the process, and to comply with specific statutory requirements of EEOICPA.

D. Statutory Requirements for Designating Classes of Employees as Members of the Cohort

EEOICPA includes several requirements for these procedures. The Advisory Board on Radiation and Worker Health (''the Board'') is authorized to provide advice to the President (delegated to the Secretary of HHS) concerning the designation of additional classes as members of the Cohort. The Board's advice is to be based on ''exposure assessments by radiation health professionals, information provided by DOE, and other such information as the Board considers appropriate.'' 42 U.S.C. 7384q. Section 7384q specifies that HHS obtain the advice of the Board ''after consideration of petitions by classes of employees for such advice.'' This section also mandates two broad criteria to govern HHS decisions, which are to be made after receiving the advice of the Board. Members of a class of employees at a DOE or AWE facility may be treated as members of the Cohort for purposes of the compensation program if HHS ''determines that: (1) It is not feasible to estimate with sufficient accuracy the radiation dose that the class received; and (2) there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.'' Finally, 42 U.S.C. 7384l(14)(C) requires the Secretary to submit a report to Congress for each class of employees the Secretary designates to be added to the Cohort. The report must define the class of employees covered by the designation and specify the criteria used to make the designation. This section requires that the designation take effect 180 days after the date on which HHS submits the report to Congress unless Congress takes action to reverse or expedite the designation.

E. Relationship of Proposed Procedures to Rules Proposed and Promulgated by HHS To implement EEOICPA

These procedures complement the two HHS rules promulgated by HHS on May 2, 2002, to implement EEOICPA for cancer claimants who are not members of the Cohort. These are the final rule: ''Guidelines for Determining the Probability of Causation Under the Energy Employees Occupational Illness Compensation Program Act of 2000'' promulgated at 42 CFR Part 81 (67 FR 22296), and the final rule: ''Methods for Radiation Dose Reconstruction Under the Energy Employees Occupational Illness Compensation Program Act of 2000'' promulgated at 42 CFR Part 82 (67 FR 22314).

The final rule 42 CFR Part 82 provides the methods by which NIOSH is conducting dose reconstructions to estimate the radiation doses incurred by individual covered employees who have incurred cancer. These estimates are required by EEOICPA to adjudicate a non-Cohort cancer claim. The methods to arrive at these estimates, however, will be directly considered by HHS in reviewing petitions to add classes of employees to the Cohort. In particular, HHS will consider these methods in determining for a petitioning class of employees, as required by EEOICPA, whether ''it is not feasible to estimate with sufficient accuracy the radiation dose that the [individual members of] the class received.''

HHS is requiring a finding that NIOSH would be unable to complete dose reconstructions for the individual members of a class of employees to satisfy this first statutory requirement concerning ''sufficient accuracy.'' In practical terms, if NIOSH can successfully reconstruct the radiation doses of members of the class under the requirements of 42 CFR Part 82, then the doses of the class members can be estimated with ''sufficient accuracy'' for DOL to adjudicate claims.

Commenters on 42 CFR Part 82 asked HHS to define the conditions under which NIOSH would not have sufficient information to complete a dose reconstruction, with the understanding that such conditions would be relevant to petitions to add classes to the Cohort. As HHS explained in response to the comments, these conditions will vary on a case-by-case basis. In some cases, limited information about the radiation source term (type and quantity of radioactive material) and the process in which it was used, without any individual monitoring records, will be sufficient to complete a dose reconstruction, particularly when the potential level of radiation that was emitted is extremely low. In these cases, NIOSH can make use of worst case assumptions to fully account for the highest possible radiation doses that might have been incurred.

Simplifying assumptions become more difficult to apply, however, when the potential level of radiation exposure for an individual ranges greatly, particularly when they range from low levels to potentially compensable levels (levels that produce a probability of causation of 50% and above). In these circumstances, the ability of NIOSH to complete a dose reconstruction depends on the extent and quality of information available to substitute for monitoring data. This can be defined on a case-by-case basis but not by using rigid criteria; the potential circumstances are not readily foreseeable.

Some of the methods of dose reconstruction under 42 CFR Part 82 will also be applied in these procedures, to the limited extent feasible, to make the second statutorily required determination as to whether: ''there is reasonable likelihood that * * * radiation * * * may have endangered the health of members of the class.'' Although dose reconstructions would not be feasible for individual members of a petitioning class of employees, the process of determining that dose

[1] Specified cancers are a limited group of cancers that are compensable under provisions governing compensation for members of the Cohort. The list of specified cancers and the provisions governing compensation for the Cohort can be found at 20 CFR Part 30. In addition, Pub. L. 107–20 added renal cancer to the list of specified cancers, and Pub. L. 107–107 added leukemia, when initial exposure is before age 21, to the list.

reconstructions are not feasible should provide information to determine imprecisely the potential level of radiation to which the class could have been exposed. For example, the most limited information indicating the type, form, and quantities of radioactive materials present or used in a work operation would provide a basis for judging whether occupational exposures could have exceeded certain specific levels, as discussed further below.

The HHS rule 42 CFR Part 81 establishes guidelines by which DOL will estimate the probability that the cancer of an employee was caused by ionizing radiation doses incurred by the employee in the performance of duty for DOE nuclear weapons programs. The guidelines are based in substantial part on scientific work of the National Cancer Institute, which has developed an important scientific tool, the Interactive RadioEpidemiological Program (IREP) for this purpose. IREP produces statistical estimates of the probability that a specific cancer was caused by specific amounts and types of ionizing radiation. NIOSH worked with NCI on IREP and developed a special application of IREP (''NIOSH–IREP'') to serve the needs of DOL in implementing EEOICPA for cancer claimants who are not members of the Cohort.

NIOSH–IREP will be used by HHS in these procedures, in conjunction with dose estimating methods, as discussed above, in making the determination required by EEOICPA as to whether ''there is reasonable likelihood that * * * radiation * * * may have endangered the health of members of the class.'' In particular, NIOSH will use NIOSH–IREP to determine whether a radiation exposure to a class of employees was potentially high enough to cause any of the specified cancers for which members of the class could be compensated under provisions of EEOICPA and 20 CFR Part 30 concerning eligibility for compensation. Use of NIOSH–IREP for this purpose will provide a feasible degree of objectivity and consistency between the policies governing compensation for claims under provisions for the Cohort and under provisions for all other cancer claims. Additional detail on how HHS proposes using NIOSH–IREP in evaluating Cohort petitions is provided under Section III of this Supplementary Information and Section 83.12 of the procedures.

III. Summary of Proposed Rule

Congress, in enacting EEOICPA, created an Energy Employees Occupational Illness Compensation Program to ensure an efficient, uniform, and adequate compensation system for certain employees involved in nuclear weapons production and related activities. Under Executive Order 13179, the President assigned primary responsibility for administering the program to DOL. The President assigned various technical responsibilities for policymaking and assistance to HHS. Included among these is the issuance and implementation of these proposed procedures for designating classes of employees to be added to the Cohort. This proposed rule includes procedures for the submission of petitions to add classes of employees to the Cohort and procedures by which HHS will consider such petitions and determine their outcome, with the advice of the Advisory Board on Radiation and Worker Health (''the Board'').

Subtitle A—Introduction

Section 83.0 and 83.1 briefly describe how this proposal relates to DOL authorities under EEOICPA and report the assignment of responsibility for this proposal to HHS. Section 83.1 also outlines the purpose of the proposal and general principles guiding its development.

Section 83.2 describes the relevance of this proposal for cancer claimants under EEOICPA. It explains the option of petitioning for a Cohort designation by cancer claimants for whom NIOSH attempted and was unable to complete dose reconstructions. The initial claims of these individuals will be denied by DOL, because for individuals who are not a member of the Cohort, DOL must determine the probability that their cancers were caused by their radiation exposures. DOL's determination relies upon NIOSH's ability to successfully produce radiation dose estimates through its dose reconstruction program under EEOICPA. Section 83.2 also explains that individuals who would be eligible to file a claim but have yet to incur a cancer, ''potential claimants,'' can also submit petitions on behalf of a class of employees.

Section 83.3 summarizes the role of DOL in administering claims for individuals who are members of classes of employees added to the Cohort under this proposal. It identifies the principal criteria applied by DOL in reviewing each claim, and provides a reference locating the relevant regulatory requirements.

Subtitle B—Definitions

Section 83.5 defines the principal terms used in this proposal. It includes terms specifically defined in EEOICPA that, for the convenience of the reader of this proposal, are repeated in this section.

An important statutory term requiring interpretation by HHS is ''endangered the health.'' This term is interpreted by HHS to mean ''there is a reasonable likelihood that the radiation dose may have caused a specified cancer,'' since members of the Cohort cannot be compensated as Cohort members for any adverse health effects other than specified cancers. This definition and the related issue of establishing a ''reasonable likelihood'' are addressed below in the discussion of Section 83.12 under ''Procedures for Adding Classes of Employees to the Cohort.'' HHS invites comment on this definition.

Subtitle C—Procedures for Adding Classes of Employees to the Cohort

Section 83.6 provides an overview of the procedures.

Section 83.7 describes the qualifications for a person submitting a petition. A petition can be submitted by one or more DOE, DOE contractor or subcontractor, or AWE employees, their survivors, or a labor union representing the employees. Consideration was given to allowing other potential representatives of classes of employees to submit petitions, such as persons who have performed evaluations of radiation exposures and radiation protection programs at DOE sites on a contractual basis or in the course of research. These individuals may have sufficient expertise to identify classes of employees that should be added to the Cohort under this policy. However, HHS found it reasonable to require that such experts work on behalf and with the consent of one or more members of the class, who are the interested parties. Hence, the consenting member(s) of the class can submit the petition with the aid of the expert, who would assist the petitioners to provide justification for the petition, as provided for under Section 83.9. HHS invites public comment on these proposed qualifications. In particular, HHS seeks suggestions about any additional categories of individuals who might be authorized to submit a petition on behalf of a class of employees.

Section 83.8 describes the procedure for submitting a petition. Petitioners are required to complete a form made available by NIOSH, which can be submitted in hard copy or electronically. The form is intended to enable HHS to provide clear and consistent guidance to petitioners efficiently, explaining the information required from the petitioners for HHS to evaluate the petition.

Section 83.9 summarizes the informational requirements of a petition. HHS requires a petitioner to establish a substantial basis for petitioning to be part of the Cohort. The type of information needed to establish a substantial basis differs, depending on the circumstances of the proposed class. The information is described generally in this section and specifically in the petition form to be provided to potential petitioners by NIOSH.

If the proposed class includes one or more members who have already submitted claims and for whom NIOSH was unable to complete a dose reconstruction due to insufficient information, the informational requirements of the petition are minimal. The petitioner need only include a copy of NIOSH dose reconstruction report(s), together with information required by HHS to administer the petition evaluation.

Petitions involving claims for which NIOSH has attempted unsuccessfully to complete dose reconstructions provide a substantial basis for HHS consideration. For this reason, HHS encourages potential petitioners qualified to submit claims to DOL (i.e., covered employees who have already incurred a cancer) to do so and allow NIOSH to attempt to complete individual dose reconstructions prior to submitting petitions.

If NIOSH has not yet determined whether or not it can complete dose reconstructions for a class of employees, the petition must include detailed information defining the proposed class of employees on whose behalf the petition is being submitted, and information to justify the petition. This information must include positive evidence that records required to conduct dose reconstructions do not exist. NIOSH would assist potential petitioners in requesting information from their current or former employers on the availability of such records, if the employer were unresponsive to such requests by the petitioner.

The information provided by the petitioner will help HHS and the Board make the required determinations of: (1) Whether or not the class was exposed to levels of radiation that may have endangered the health of the class; and (2) whether records and information available are adequate to estimate with sufficient accuracy the radiation doses incurred by individual members of the proposed class.

HHS invites comments on the general scheme proposed here, particularly the different requirements for potential petitioners depending upon whether or not NIOSH has already determined it is not possible to conduct dose reconstructions for members of the proposed class. HHS also invites comments on the specific informational requirements. Do they achieve a fair and reasonable balance between the level of burden placed on potential petitioners and the information HHS and the Board need to consider petitions fairly and efficiently? Are there alternative approaches that HHS should consider?

Section 83.10 describes the roles and procedures of NIOSH, HHS, and the Board in selecting petitions for evaluation and notifying the petitioners of the resulting decision. NIOSH will select petitions for evaluation that have met the requirements of this section. Petitioners who have not met the informational requirements for a petition will be notified of this finding in writing, after the opportunity to remedy any omissions. The Board will have the opportunity to review the petition and the finding of HHS and provide its recommendation before HHS makes a final decision. HHS will then notify the petitioner of the final decision to select or not select the petition for evaluation.

NIOSH will present to the board petitions that are selected together with a plan for evaluating the petition. NIOSH will initiate the evaluation as soon as possible, but will consider any advice of the Board concerning the plan, when the Board gives such advice. The Board will have already provided NIOSH advice on a generic approach to such evaluations.

Section 83.11 describes procedures that apply when HHS decides not to select a petition for evaluation. A cancer claim for a member of the class of employees proposed by the petition would continue to be adjudicated under provisions of 20 CFR Part 30 governing claims for compensation not based upon the Cohort. Under these provisions, NIOSH would attempt to conduct a dose reconstruction for the individual. HHS will reverse its decision not to evaluate the petition if NIOSH finds that dose reconstructions cannot be completed for members of the class proposed by the petition. HHS may also reconsider its decision to not select a petition at any time based on new information.

Section 83.12 describes how NIOSH will evaluate petitions to support the Board in making recommendations and the Secretary in deciding the outcome of the petition. The section specifies the potential types of information, which are the same as those used for dose reconstruction under 42 CFR Part 82, and specifies the potential sources for this information. NIOSH will evaluate this information to make two determinations required by EEOICPA: (1) Whether there was ''a reasonable likelihood that such radiation dose may have endangered the health of members of the class'' and (2) whether the level of radiation exposures to individual members of the class can be estimated with ''sufficient accuracy''—in other words, using the methods of dose reconstruction established under 42 CFR Part 82. If health was endangered and the level of radiation exposures to individuals cannot be estimated through dose reconstructions, these findings would provide the basis for the Board to advise and HHS to decide that a class of employees be added to the Cohort.

HHS interprets ''endangered the health'' to mean a finding that there was a reasonable likelihood that such radiation dose may have caused a specified cancer since, as explained above, EEOICPA restricts compensation under provisions concerning the Cohort to those members of the Cohort who have incurred a specified cancer. To determine whether the potential level of radiation exposure is sufficient to produce ''a reasonable likelihood'' of having caused a specified cancer, HHS will apply an objective but necessarily less demanding standard than was established under EEOICPA and applied under 42 CFR part 81 [2], as follows.

NIOSH would use NIOSH–IREP, a software tool which was developed under 42 CFR Part 81 for estimating the probability that specific radiation doses caused a specific type of cancer in a specific individual. Since use of NIOSH–IREP requires information about the type of cancer, the attributes of the individual, and the circumstances of the individual's exposure to radiation, information which may not be known or applicable to a class of employees, NIOSH will apply hypothetical values for these variables as necessary. The hypothetical values will reasonably represent what is known about the class of employees and its radiation exposure, while giving the benefit of the doubt to the employees with respect to what may be unknown. However, because the specified cancers differ according to the amount and type of radiation dose that will result in a probability of causation of 50% or higher calculated at the 99 percent credibility limit using NIOSH–

[2] Under EEOICPA and 42 CFR Part 81, the standard for ''at least as likely as not'' is a 50% or greater probability at the upper 99 percent credibility limit. This standard is designed to provide a large margin of error in ensuring that an employee whose cancer was likely to have been caused by radiation would not be denied compensation under EEOICPA. For a full explanation of this statistical concept and its use in NIOSH–IREP, see the explanation in the preamble to 42 CFR Part 81 (66 FR 50967, 50968–9).

IREP, NIOSH will select the type of specified cancer that is most readily caused by the radiation exposures to which the employees were potentially exposed—the ''most radiogenic'' specified cancer.[3] If leukemia is the most radiogenic cancer caused by the radiation exposures of concern to the class, however, NIOSH would select both leukemia and the most radiogenic solid tumor cancer, to reasonably account for the fact that leukemia is extremely radiogenic but also rare (it may not occur at all in the employee class). NIOSH will then use these variables and the selected type of cancer in NIOSH–IREP to determine the level of radiation dose to which a member of the proposed class of employees would have to have been exposed to reach a probability of causation of 50 percent at the 99 percent credibility limit.[4] Using this level as the benchmark, NIOSH would determine whether the actual level of radiation to which members of a class may have been exposed could have reached or exceeded this benchmark, based on the radiation source term (the type and quantity of radioactive materials), the work processes, the radiation safety procedures, or other relevant information. If so, the class would satisfy the criterion for health endangerment.

The practical result of this approach is to establish an objective measure of health endangerment with minimal use of subjective expert judgment. Subjective judgment will grant petitioning classes the benefit of the doubt with respect to all assumptions about radiation exposure levels and characteristics required to substitute for the lack of dosimetry records and information from DOE or the AWEs. Given the sparsity of records and information required to substantiate a SEC petition, these assumptions should be relatively few and simple. They should provide an easy basis for review by the Board and other experts.

By evaluating probability of causation using the most radiogenic cancer, HHS similarly gives the petitioning class a substantial benefit of the doubt with respect to the cancers that will actually be incurred by members of the class. This reasonably minimizes the level of radiation dose required to produce a probability of causation of 50 percent at the 99 percent credibility limit, and thereby helps ensure HHS would approve a petition when there is a ''reasonable likelihood'' that the health of members of the class may have been endangered.

The entire approach presented above is intended to ensure HHS makes determinations of health endangerment as fairly, transparently, and consistently as possible, and compliant with the statutory requirement that HHS establish a ''reasonable likelihood'' that the health of members of the class may have been endangered. HHS invites comment on its proposed interpretation of health endangerment and approach to evaluate it.

Based on the findings of evaluations used to make the two determinations discussed above, NIOSH may propose revisions, as appropriate, to the proposed definition of the class of employees covered by the petition. For example, NIOSH might find through such evaluations that the definition of the class of employees should be broadened to include additional workers not identified previously, or that the individuals identified in several petitions should constitute a single class of employees. NIOSH might also find that more than one class of employees is proposed by the petition, for which the two determinations discussed above differ.

The definition of the class will include a minimum duration of employment for an individual to be included in the class. Members of the gaseous diffusion plants included by statute in the Cohort must have been employed at the plants for a minimum of 250 days, as provided under EEOICPA. The same duration may be appropriate for other classes of employees added to the Cohort. NIOSH will propose a minimum duration, as appropriate, based on its findings concerning the circumstances, types, and potential levels of radiation exposure to each class of employees. In cases in which NIOSH cannot establish a substantial basis for specifying a duration of employment, NIOSH will use the 250 day duration of employment required for employees of the gaseous diffusion plants.

With the completion of this evaluation, NIOSH will provide the Board and the petitioners with an evaluation report summarizing its methods and findings. The contents of the report are specified in this section.

Section 83.13 describes how the Board will evaluate a petition. Its evaluation will be conducted in one or more public meetings that will be announced in the **Federal Register**, together with a summary of the petition and the NIOSH evaluation report. The Board will review the petition and the NIOSH report. In addition, the petitioner will have the opportunity to address the Board regarding its petition and the NIOSH evaluation report. If NIOSH subsequently conducts additional evaluation in response to the review and recommendation of the Board, NIOSH will provide a supplementary report to the petitioner(s) and the Board for further deliberation. At the conclusion of the Board's deliberation, the Board will prepare a report providing recommendations to the Secretary on whether or not to add the proposed class of employees to the Cohort, as well as on the definition of the class. The report will include the criteria and information that provide the basis for the Board's recommendations.

Section 83.14 describes how the Secretary will produce final decisions on the outcome of petitions. The Secretary will issue proposed decisions to the petitioner(s), including a definition of the class or classes of employees effected and a summary of the criteria and information supporting the decision. The petitioner(s) will have 30 days to challenge a proposed decision of the Secretary by requesting an administrative review of the record. After 30 days or resolution of a challenge, the Secretary will transmit a final decision to the petitioner(s). At this time, the Secretary will also publish in the **Federal Register** decisions to deny adding classes of employees to the Cohort. Decisions to add a class of employees to the Cohort will not be published in the **Federal Register** until expiration of the 180 day congressional review period addressed in § 83.15 and discussed below.

Section 83.15 describes the role of Congress in designating additional classes as members of the Cohort. As required by EEOICPA, the Secretary will notify Congress by report of final decisions to add classes of employees to the Cohort, including a definition of the class and the criteria and information upon which the decision was based. Congress will then have 180 days during which it may take an action to reverse or expedite the designation. Without action by Congress, the designation becomes effective automatically 180 days after the date Congress received the report of the Secretary. Within 200 days, the Secretary will transmit to DOL and publish in the **Federal Register** the definition of the class covered by the

[3] Despite selection of the most radiogenic cancer to calculate probability of causation, once a class of employees has been added to the Cohort, members would be eligible for compensation for incurring any of the specified cancers, not only the cancer used for this calculation.

[4] In a case where NIOSH uses both leukemia and the most radiogenic solid tumor cancer, NIOSH would average the two doses resulting from the NIOSH–IREP analysis to produce a single dose level to use as the benchmark discussed subsequently in this paragraph.

designation and the outcome of the designation, reflecting any action taken by Congress.

Section 83.16 describes how the Secretary would cancel a final decision to add a class to the Cohort or modify a final decision to reduce the scope of a class the Secretary had added to the Cohort. The addition of a class to the Cohort by the Secretary is premised on the lack of sufficient records and information to enable NIOSH to complete dose reconstructions for members of the class under 42 CFR Part 82. In the event that HHS subsequently obtains sufficient records and information for reconstructing the doses of some or all members of a class the Secretary has added to the Cohort (e.g., records that were deemed non-existent or missing at the time HHS decided to add the class to the Cohort), the provisions of Section 16 are intended to reverse or modify the decision. Covered employees who are no longer in the Cohort may still seek compensation by establishing that their cancer was at least as likely as not related to covered employment. Thus, their claims seeking compensation for cancers would be evaluated by DOL and forwarded to NIOSH for dose reconstructions under 42 CFR Part 82.

IV. Regulatory Assessment Requirements

A. Executive Order 12866

Under executive order (E.O.) 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. This notice of proposed rulemaking is being treated as a ''significant regulatory action'' within the meaning of the executive order because it meets the criterion of Section 3(f)(4) in that it raises novel or legal policy issues arising out of the legal mandate established by EEOICPA. It proposes to establish practical procedures, grounded in current science, by which the Secretary of HHS can fairly consider petitions to add classes of employees to the Cohort. The financial cost to the federal government of responding to these petitions is likely to vary from several thousand dollars to as much as tens of thousands of dollars, depending on the availability of information and scope of the petition.

The notice of proposed rulemaking carefully explains the manner in which the procedures are consistent with the mandate of 42 U.S.C. 7384q and implements the detailed requirements of that section. The proposal does not interfere with State, local, and tribal governments in the exercise of their governmental functions.

The proposal is not considered economically significant, as defined in section 3(f)(1) of the E.O. 12866. It has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by DOL under 20 CFR Parts 1 and 30. DOL has determined that its rule fulfills the requirements of E.O. 12866 and provides estimates of the aggregate cost of benefits and administrative expenses of implementing EEOICPA under its rule (see 66 FR 28948, May 25, 2001). OMB has reviewed this proposal for consistency with the President's priorities and the principles set forth in E.O. 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. This proposal affects only DOL, DOE, HHS, and certain individuals covered by EEOICPA. Therefore, a regulatory flexibility analysis as provided for under RFA is not required.

C. What Are the Paperwork and Other Information Collection Requirements (Subject to the Paperwork Reduction Act) Imposed Under This Proposed Rule, and How Are Comments Submitted?

Under the Paperwork Reduction Act of 1995, a Federal agency shall not conduct or sponsor a collection of information from ten or more persons other than Federal employees unless the agency has submitted a Standard Form 83, Clearance Request, and Notice of Action, to the Director of the Office of Management and Budget (OMB), and the Director has approved the proposed collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The Paperwork Reduction Act is applicable to the data collection aspects of these proposed procedures.

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 projects. To request more information on this project or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639–7090.

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 45 days of this notice.

Under the proposed rule, NIOSH will provide an ''SEC Petition Form'' petitioners must use to submit a petition. The form and accompanying instructions will assist the claimants in meeting the informational requirements of these procedures for petitions to be selected for evaluation by HHS and the Board. The completed form can be submitted in hard copy or electronically over the internet.

There will be no cost to respondents for this data collection. This is a new data collection. The estimated annual burden of this data collection is described in the table below.

Respondents	Number of respondents	Number of responses	Avg. burden per response (hrs.)	Total hours
SEC Petition Form	90	1	68/60	103

D. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Department will report to Congress promulgation of this proposed rule prior to its effective date. The report will state that the Department has concluded that this proposed rule is not a ''major rule'' because it is not likely to result in an annual effect on the economy of $100 million or more. However, this proposed rule has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by DOL under 20 CFR Parts 1 and 30. DOL has determined that its rule is a ''major rule'' because it will likely result in an annual effect on the economy of $100 million or more.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this proposed rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or tribal governments in the aggregate, or by the private sector.

F. Executive Order 12988 (Civil Justice)

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform and will not unduly burden the Federal court system. HHS adverse decisions may be reviewed in United States District Courts pursuant to the Administrative Procedure Act. HHS has attempted to minimize that burden by providing petitioners an opportunity to seek administrative review of adverse decisions. HHS has provided a clear legal standard it will apply in considering petitions. This proposed rule has been reviewed carefully to eliminate drafting errors and ambiguities.

G. Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The proposed rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

H. Executive Order 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this proposed rule on children. HHS has determined that the proposed rule would have no effect on children.

I. Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, HHS has evaluated the effects of this proposed rule on energy supply, distribution or use, and has determined that the proposed rule will not have a significant adverse effect on them.

List of Subjects in 42 CFR Part 83

Government employees, Occupational safety and health, Nuclear materials, Radiation protection, Radioactive materials, Workers' compensation.

Text of the Proposed Rule

For the reasons discussed in the preamble, the Department of Health and Human Services proposes to amend 42 CFR to add Part 83 to read as follows:

PART 83—PROCEDURES FOR DESIGNATING CLASSES OF EMPLOYEES AS MEMBERS OF THE SPECIAL EXPOSURE COHORT UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000

Subpart A—Introduction

Sec.

Subpart B—Definitions

Subpart C—Procedures for Adding Classes of Employees to the Cohort

Authority: 42 U.S.C. 7384q; E.O. 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321.

Subpart A—Introduction

§ 83.0 Background information on the procedures in this part.

The Energy Employees Occupational Illness Compensation Program Act (''EEOICPA''), 42 U.S.C. 7384–7385 [1994, supp. 2001], provides for the payment of compensation benefits to

covered employees and, where applicable, survivors of such employees, of the United States Department of Energy (''DOE''), its predecessor agencies and certain of its contractors and subcontractors. Among the types of illnesses for which compensation may be provided are cancers. There are two methods set forth in the statute for claimants to establish that a cancer incurred by a covered worker is covered by the EEOICPA. The first is to establish that the cancer is at least as likely as not related to covered employment at a DOE or Atomic Weapons Employer (''AWE'') facility pursuant to guidelines issued by the Department of Health and Human Services (''HHS''), which are found at 42 CFR Part 81. The other method to establish that a cancer incurred by a covered worker is covered by EEOICPA is to establish that the worker was a member of the Special Exposure Cohort (''Cohort'') who suffered a specified cancer after beginning employment at a DOE or AWE facility. Section 7384l(14) of the EEOICPA includes certain classes of employees in the Cohort. Section 7384q of the Act authorizes the addition to the Cohort of other classes of employees. This authority has been delegated to the Secretary of HHS by Executive Order 13179.

§ 83.1 What is the purpose of the procedures in this part?

EEOICPA authorized the President to designate additional classes of employees to be added to the Cohort, while providing Congress with the opportunity to review and affect these decisions. The President has delegated authority to consider and make such designations to the Secretary. The purpose of this part is to specify the procedures by which HHS determines whether to add new classes of employees from DOE and AWE facilities to the Cohort. HHS will consider adding new classes of employees only in response to petitions by or on behalf of such classes of employees, as authorized under EEOICPA and described in these procedures. The procedures are intended to ensure petitions for additions to the Cohort are given uniform, fair, scientific consideration, that petitioners and interested parties are provided opportunity for appropriate involvement in the process, and that the process is consistent with statutory requirements specified in EEOICPA.

§ 83.2 How would cancer claimants be affected by the procedures in this part?

This part implements provisions of EEOICPA intended to serve potential and current cancer claimants whose radiation doses (incurred by a covered employee in the case of a survivor claimant) cannot be estimated by the completion of a NIOSH dose reconstruction.

(a) A current cancer claimant can petition on behalf of a class of employees to be added to the Cohort upon determination by NIOSH that it cannot complete a dose reconstruction for the claimant. The initial claim of the claimant must be denied by DOL, since compensation for a cancer claim not based on the Cohort provision requires the completion of NIOSH dose reconstruction. However, if a petition by the claimant is successful, the claimant could reapply and obtain compensation as a Cohort member (or survivor of a Cohort member), if the claim qualifies under requirements governing compensation to members of the Cohort.

(b) A potential cancer claimant, a qualified DOE, DOE contractor or subcontractor, or AWE employee who has not incurred cancer, can also petition on behalf of a class of employees to be added to the Cohort. A successful petition would entitle the claimant, upon incurring a specified cancer, to submit a claim for compensation under provisions of the Cohort.

§ 83.3 How will DOL use the designations established under the procedures in this part?

DOL will adjudicate claims for compensation for members of classes of employees added to the Cohort according to the same general procedures that apply to the statutorily defined classes of employees in the Cohort. In summary, this review by DOL will determine whether the claim is for a qualified member of the Cohort with a specified cancer, pursuant to the procedures set forth in 20 CFR Part 30.

Subpart B—Definitions

§ 83.5 Definitions of terms used in the procedures in this part

(a) *Advisory Board for Radiation and Worker Health (''the Board'')* is a federal advisory committee established under EEOICPA and appointed by the President to advise HHS in implementing its responsibilities under EEOICPA.

(b) *Atomic Weapons Employer (''AWE'')* is a statutory term of EEOICPA which means any entity, other than the United States, that:

(1) Processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling: and,

(2) Is designated by the Secretary of Energy as an atomic weapons employer for purposes of EEOICPA.

(c) *Class of employees* means, for the purposes of this proposal, a group of employees who work or worked at the same DOE or AWE facility, who may have experienced similar types and levels of exposure to radiation, and for whom the availability of information and recorded data on such exposures is comparable with respect to the informational needs of dose reconstructions conducted under 42 CFR Part 82.

(d) *HHS* is the U.S. Department of Health and Human Services

(e) *DOE* is the U.S. Department of Energy, which includes predecessor agencies of DOE, including the Manhattan Engineering District.

(f) *DOL* is the U.S. Department of Labor

(g) *Employee,* for the purposes of these procedures, means a person who is or was an employee of DOE, a DOE contractor or subcontractor, or an atomic weapons employer, as further defined in EEOICPA.

(h) *Endangered the health* is a statutory term from EEOICPA which means, for the purposes of these procedures, ''there is reasonable likelihood that the radiation dose may have caused a specified cancer,'' determined according to these procedures using NIOSH-IREP.

(i) *Interactive RadioEpidemiological Program (''IREP'')* is a computer software program that uses information on the dose-response relationship and specified factors such as a claimant's radiation exposure, gender, age at diagnosis, and age at exposure to calculate the probability of causation for a given pattern and level of radiation exposure.

(j) *NIOSH* is the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

(k) *Probability of causation* means, for the purposes of these procedures, the probability or likelihood that a cancer was caused by radiation exposure incurred by a covered employee in the performance of duty. In statistical terms, it is the cancer risk attributable to radiation exposure divided by the sum of the baseline cancer risk (the risk to the general population) plus the cancer risk attributable to the radiation exposure. This concept is further explained under 42 CFR Part 81, which provides guidelines by which DOL will determine probability of causation under EEOICPA.

(l) *Radiation* means ionizing radiation, including alpha particles, beta particles, gamma rays, x rays, neutrons, protons and other particles capable of producing ions in the body. For the purposes of the proposed procedures, radiation does not include sources of non-ionizing radiation such as radio-frequency radiation, microwaves, visible light, and infrared or ultraviolet light radiation.

(m) *Secretary* is the Secretary of the Department of Health and Human Services.

(n) *Specified cancer* (as defined in section 4(b) of the Radiation Exposure Compensation Act Amendments of 2000 (42 U.S.C. 2210 note) and section 7384l(17) of EEOICPA means:

(1) Leukemia (other than chronic lymphocytic leukemia) if onset occurred more than two years after first exposure;

(2) Primary or secondary lung cancer (other than in situ lung cancer that is discovered during or after a post-mortem exam);

(3) The following diseases, provided onset was at least 5 years after first exposure:

(i) Multiple myeloma;

(ii) Lymphomas (other than Hodgkin's disease);

(4) Primary cancer of the:

(i) Thyroid;

(ii) Male or female breast;

(iii) Esophagus;

(iv) Stomach;

(v) Pharynx;

(vi) Small intestine;

(vii) Pancreas;

(viii) Bile ducts;

(ix) Gall bladder;

(x) Salivary gland;

(xi) Urinary bladder;

(xii) Brain;

(xiii) Colon;

(xiv) Ovary;

(xv) Liver (except if cirrhosis or hepatitis B is indicated).

(5) Primary or secondary bone cancer.

(6) Primary or secondary renal cancers.

(o) The specified diseases designated in paragraph (n) of this section mean the physiological condition or conditions that are recognized by the National Cancer Institute under those names or nomenclature, or under any previously accepted or commonly used names.

Subpart C—Procedures for Adding Classes of Employees to the Cohort

§ 83.6 Overview of the Procedures in this Part.

The procedures in this part specify who may petition to add a class of employees to the Cohort, the requirements for such a petition, how a petition will be selected for evaluation by NIOSH and for the advice of the Board, and the process by which NIOSH, the Board, and the Secretary will operate in considering a petition, leading to the Secretary's final decision to accept or deny the petition. The petition requirements differ for classes of employees including members who have submitted cancer claims already, for whom NIOSH attempted and was unable to complete individual dose reconstructions as specified under 42 CFR 82.12. As required by EEOICPA, the procedures include formal notice to Congress of any decision by the Secretary to add a class to the Cohort, and the opportunity for Congress to change the outcome of the decision.

§ 83.7 Who can submit a petition on behalf of a class of employees?

Petitioners must be one of the following:

(a) One or more DOE, DOE contractor or subcontractor, or AWE employees or their survivors (as defined under EEOICPA and 20 CFR Part 30); and/or

(b) A labor union representing or formerly having represented DOE, DOE contractor or subcontractor, or AWE employees who would be included in the proposed class of employees.

§ 83.8 How is a petition submitted?

(a) The petitioner(s) must send a completed ''SEC Petition Form'' to NIOSH/OCAS addressed as follows: SEC Petition, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS–R45, Cincinnati, OH 45226.

(b) The SEC petition form is available from NIOSH by calling the NIOSH toll-free phone service at 1–800–35–NIOSH. The form is also available from the NIOSH homepage at: *www.cdc.gov/niosh.* The form can be completed and submitted electronically following instructions provided on the NIOSH homepage.

§ 83.9 What information must a petition include?

The petition must include complete information according to the instructions on the SEC petition form. As explained by these instructions, in addition to identifying and contact information, the petitioner(s) must provide the substantive information described under paragraph (a) or (b) of this section before the petition is considered. These informational requirements are also summarized in Table 1 of this section.

(a) The petition must transmit a copy of a report produced by NIOSH under 42 CFR 82.12 notifying the petitioner(s) that NIOSH attempted and could not complete a dose reconstruction for the individual(s) due to insufficient records and information; [1] or, alternatively,

(b) The petition must provide the following:

(1) A proposed class definition [2] specifying:

(i) The DOE or AWE facility at which the class worked;

(ii) The job titles and/or job duties of the class members;

(iii) The period of employment relevant to the petition;

(iv) Identification of any exposure incident(s) that was unmonitored, unrecorded, or inadequately monitored or recorded, if such incident(s) comprises the basis of the petition; and

(2) A description of the petitioners' basis for believing the class was exposed to levels of radiation at the facility that may have ''endangered the health of members of the class.'' [3] An adequate basis must include the following:

(i) A description of short-term radiation-related health effects or health care interventions that demonstrate special efforts to respond to a hazardous radiation exposure, such as a depressed white blood cell count associated with radiation exposure or the application of chelation therapy among members of the class; and/or

(ii) The following two requirements:

(A) An identification of radioactive materials and emissions; contaminated tools, equipment, or areas; and/or any other relevant information suggesting the class was potentially exposed; and

(B) A description of shortcomings of radiation protection measures, including the deficiencies of particular measures used or the omission of measures that should have been used to

[1] A Cohort petition by an individual for whom NIOSH was unable to complete an individual dose reconstruction under 42 CFR Part 82 will be selected for evaluation without requiring further information or documentation from the petitioner to justify consideration of the petition. NIOSH will have already collected related information from the claimant through a structured interview during the dose reconstruction process. NIOSH will establish an initial class definition based on records and information NIOSH obtained during the attempted dose reconstruction, which NIOSH would supplement with additional data collection, as necessary. HHS will establish a final class definition with the advice of the Board.

[2] HHS will determine the final class definition for each petition (see § 83.14 of these procedures).

[3] HHS interprets the statutory language ''endangered the health'' [see 42 U.S.C. § 7384q(b)(2)] to mean ''there is a reasonable likelihood that the radiation dose may have caused a specified cancer,'' since claimants cannot be compensated as members of the Cohort for any adverse health effects other than certain cancers under the relevant provisions of EEOICPA [see 42 U.S.C. § 7384l(9) and (17)].

prevent hazardous radiation exposures at the facility; and

(3) A description of the petitioner's basis for believing records and information available are inadequate to estimate the radiation doses incurred by any members of the proposed class of employees. An adequate basis must include at least one of the following elements:

(i) Documentation indicating the petitioner(s) sought records on radiation exposures at the facility and relevant to the petition and that DOE or the AWE responded indicating the records do not exist; or

(ii) A report from a health physicist or other individual with expertise in dose reconstruction documenting the limitations of existing DOE or AWE records on radiation exposures at the facility and relevant to the petition and specifying the basis for finding these documented limitations would prevent the completion of dose reconstructions for individual members of the class under 42 CFR Part 82 and related NIOSH technical implementation guidelines.

TABLE 1.—INFORMATIONAL REQUIREMENTS FOR PETITIONS

Petitioner identifying and contact information and either (a) or (b):	
(a)	(b)
Copy of NIOSH dose reconstruction report indicating that NIOSH was unable to reconstruct the radiation dose of a worker included in the proposed class.	(1) Proposed class definition identifying: (i) Facility, (ii) Job titles/duties, (iii) Period of employment, and if relevant, (iv) Exposure incident. (2) Basis for health endangerment; either: (i) Health effects or health care or (ii)(A) Identification of potential exposures, and (B) Shortcoming of radiation protection. (3) Basis for infeasibility of dose reconstruction; either: (i) Demonstrated lack of records or (ii) Expert report.

§ 83.10 How will HHS select petitions for evaluation?

(a) Where HHS finds the petition meets the requirements specified in §§ 83.7 through 83.9, HHS will transmit a written report notifying the petitioner(s) that it has selected the petition for evaluation. The HHS report will also provide the petitioner(s) with information on the steps and expected duration of the evaluation and deliberative processes required pursuant to these procedures.

(b) Where HHS finds the petition does not meet the requirements specified in §§ 83.7 through 83.9,

(1) HHS will notify the petitioner(s) of any requirements that are not met by the petition, and provide 30 days for the petitioner(s) to revise the petition accordingly.

(2) After 30 days, for petitions that continue to fail to meet one or more requirements, HHS will transmit a written report notifying the petitioner(s) of the recommended finding to not select the petition for evaluation and the basis for this recommended finding. The report will also inform the petitioner(s) that this recommended finding will be reviewed by the Board.

(3) HHS will report the recommended finding and its basis to the Board at its next meeting. HHS will consider the recommendations of the Board before producing a final decision on whether or not to select the petition for evaluation.

(4) HHS will report the final decision to the petitioner, including the basis for the decision and the recommendation of the Board.

(c) NIOSH will present petitions selected for evaluation to the Board with plans specific to evaluating each petition.[4] Each specific evaluation plan will be based on a general plan for evaluating petitions which NIOSH will develop in consultation with the Board. Each specific evaluation plan will include the following elements:

(1) An initial proposed definition for the class being evaluated, subject to revision as warranted by evaluation conducted under § 83.12; and

(2) A schedule of activities for evaluating the radiation exposure potential of the class and the adequacy of existing records and information needed to conduct dose reconstructions for all class members under 42 CFR Part 82.

(d) NIOSH may initiate work to evaluate a petition immediately, prior to presenting selected petitions and associated evaluation plans to the Board.

(e) NIOSH will publish a notice in the **Federal Register** notifying the public of its plans to evaluate a petition and soliciting information relevant to the evaluation.

§ 83.11 What happens to petitions that HHS does not select for evaluation?

(a) Qualified cancer claims by members of the class of employees proposed in the petition will be subject to NIOSH dose reconstructions under 42 CFR part 82. [5] If NIOSH is unable to complete such dose reconstructions, a petitioner on behalf of the class can submit a new petition on this basis, as provided under § 83.9(a).

(b) Based on new information, HHS may, at its discretion, reconsider a petition that was not selected for evaluation.

§ 83.12 How will NIOSH evaluate a petition?

(a) NIOSH will collect information on the types and levels of radiation exposures that potential members of the class may have incurred, as specified under 42 CFR 82.14, from the following potential sources, as necessary:

(1) The petition or petitions submitted on behalf of the class;

(2) DOE;

(3) Potential members of the class and their survivors;

(4) Labor unions who represent or represented employees at the facility during the relevant period of employment;

(5) Managers, radiation safety officials, and other witnesses present during the relevant period of employment at the DOE or AWE facility;

(6) NIOSH records from epidemiological research on DOE populations and records from dose reconstructions conducted under 42 CFR Part 82;

(7) Records from research, dose reconstructions, medical screening programs, and other related activities conducted to evaluate the health and/or radiation exposures of employees of DOE, DOE contractors or subcontractors, and the AWEs;

(8) Information obtained from any public meetings NIOSH convenes; and

(9) Other sources.

[4] NIOSH will combine separate petitions and evaluate them as a single petition if, at this or any point in the evaluation process, NIOSH finds such petitions represent the same class of employees.

[5] Only claims which DOL determines involve a covered employee who has cancer can be adjudicated by DOL to receive dose reconstructions by NIOSH under the DOL and HHS rules cited.

(b) NIOSH will evaluate records and information collected to make the following determinations:

(1) Is there a ''reasonable likelihood that such radiation dose may have endangered the health of members of the class?'

(i) To make this determination, NIOSH will interpret the statutory term ''endangered the health'' [see 42 U.S.C. 7384q(b)(2)] to mean there is a reasonable likelihood that the radiation dose may have caused a specified cancer, since the Cohort claims based on provisions of the Act can only be approved for specified cancers under the relevant provisions of EEOICPA, [see 42 U.S.C. 7384l(9) and (17)].

(ii) To determine whether radiation levels could have caused a specified cancer, NIOSH will determine the minimum level of radiation dose at which NIOSH–IREP will produce a probability of causation of 50% at the upper 99 percent credibility limit for the most radiogenic [6] specified cancer or cancers that could have resulted from the types of radiation exposures potentially incurred by potential members of the class. NIOSH will use reasonable values that confer the benefit of the doubt to the class for demographic factors used by NIOSH–IREP cancer models, such as gender and age at time of radiation exposure, except when actual values are known for the class in general; when the actual values are known, NIOSH will use these values to the extent possible. Similarly, NIOSH will use reasonable values conferring the benefit of the doubt to the class in selecting any radiation exposure parameters that are unknown and that affect the probability of causation estimate. Using this procedure to establish a minimum radiation dose level, NIOSH will determine whether potential members of the class could have incurred at least this threshold dose.

(2) Can the level of radiation exposures to individual members of the class be estimated, using the methods of dose reconstruction established under 42 CFR Part 82?

(3) How should the class be defined, to be consistent with the findings of paragraphs (b)(1) and (2) of this section?

(c) NIOSH will submit a report of its evaluation findings to the Board and to the petitioner(s). The report will include the following elements:

(1) An identification of the relevant petitions;

(2) A proposed definition of the class or classes of employees to which the evaluation applies, and a summary of the basis for this definition, including any justification that may be needed for the inclusion of individuals who were not identified in the original petition(s), the identification of any individuals who were identified in the original petition(s) who should constitute a separate class of employees, and the merging of multiple petitions that represent a single class of employees; the proposed class definition(s) will address the following parameters:

(i) The DOE or AWE facility that employed the class;

(ii) The job titles and/or job duties and/or work locations of class members;

(iii) The period of employment within which a class member must have been employed at the facility under the job titles and/or performing the job duties and/or working in the locations specified in this class definition;

(iv) If applicable, an identification of an unmonitored or unrecorded exposure incident or incidents, when such an incident(s) comprises the basis of the petition; and

(v) A minimum duration of employment for inclusion in the class; [7] and

(vi) Any other parameters that serve to define the membership of the class.

(3) a summary of the findings evaluating the potential for the health of members of the class to have been endangered by radiation exposures incurred in the performance of duty, and a description of the evaluation methods and information upon which these findings are based; and

(4) a summary of the findings evaluating the adequacy of existing records and information to allow for the successful reconstruction of doses for individual members of the class under the methods of 42 CFR Part 82; and a description of the evaluation methods and information upon which these findings are based.

§ 83.13 How will the Board evaluate a petition?

(a) NIOSH will publish a notice in the **Federal Register** in advance of a Board meeting, summarizing the petition(s) to be considered by the Board at the meeting and the findings of NIOSH from evaluating the petition(s).

(b) The Board will review the petition(s) and the NIOSH evaluation report at the meeting, at which the petitioner(s) will be invited to present views and evidence regarding the petition(s) and the NIOSH evaluation findings.

(c) NIOSH may decide to conduct additional evaluation addressing a petition(s), upon the request of the Board. If NIOSH conducts further evaluation, it will report new findings of this evaluation to the Board and the petitioner(s).

(d) Upon the completion of NIOSH evaluation and deliberations of the Board concerning a petition, the Board will develop and transmit to the Secretary a consensus [8] report containing its recommendations. The Board's report will include the following:

(1) The identification and inclusion of the relevant petition(s);

(2) The definition of the class of employees covered by the recommendation;

(3) A recommendation as to whether or not the Secretary should designate the class as an addition to the Cohort;

(4) The criteria and information upon which the recommendation is based, including NIOSH evaluation reports, information presented by petitioners, and the deliberation of the Board.

§ 83.14 How will the Secretary decide the outcome of a petition?

(a) The Secretary will propose, and transmit to all affected petitioners, a decision to add or deny adding classes of employees to the Cohort.

(b) HHS will provide the petitioner(s) 30 days to contest the proposed decision of the Secretary. If the petitioner submits to HHS a challenge that includes substantial evidence that the proposed decision relies on a record of either factual or procedural errors in the implementation of these procedures, then HHS will consider the evidence submitted by the petitioner prior to issuing a final decision. Challenges to

[6] The ''most radiogenic'' specified cancer will be the type of specified cancer that is most readily caused by the radiation exposures to which the employees were potentially exposed. In more technical terms, it will be the type of specified cancer which requires the lowest dose of the radiation types to which the employees were potentially exposed to produce a probability of causation of 50 percent at the upper 99 percent confidence limit using NIOSH–IREP. In a case in which the most radiogenic specified cancer is leukemia, NIOSH would select both leukemia and the most radiogenic solid tumor cancer and apply them separately in the NIOSH–IREP analysis discussed in this section, and then average the two resulting threshold doses to establish the threshold dose to be applied in evaluating health endangerment for the class.

[7] NIOSH will define the minimum duration of employment as 250 days for classes for which NIOSH lacks a substantial basis to support establishment of a different minimum duration.

[8] The term ''consensus'' as used with respect to the decisions of federal advisory committees established under the Federal Advisory Committee Act (FACA) does not necessarily mean ''unanimity.'' These committees have broad parameters under which they can define the extent of agreement among members of the committee that will constitute consensus and allow a decision to be adopted as a decision of the committee.

decisions of the Secretary under these procedures must be submitted in writing, with accompanying documentation supporting the assertions.

(c) HHS will issue a final decision on the designation and definition of the class, and transmit a report of the decision and the criteria and information upon which the decision is based to the petitioner(s).

(d) HHS will publish in the **Federal Register** at this time decisions to deny adding a class of employees to the Cohort, including a definition of the class and a summary of the criteria and information upon which the decision is based. HHS will not publish in the **Federal Register** affirmative decisions to add a class to the Cohort until expiration of the 180 day congressional review period, as specified under § 83.15.

(e) As a matter of discretion, the Secretary may consider other factors or employ other procedures not set forth in this part when he deems it necessary to do so to address the circumstances of a particular petition.

§ 83.15 What is the role of Congress in acting upon the final decision of the Secretary to add a class of employees to the Cohort?

(a) If the Secretary designates a class of employees to be added to the Cohort, the Secretary will transmit to Congress a report providing the designation, the definition of the class of employees covered by the designation, and the criteria and information upon which the designation was based. [9]

(b) A designation of the Secretary will take effect 180 days after the date on which the report of the Secretary is submitted to Congress, unless Congress takes an action that reverse or expedite the designation.

(c) Within 200 days after transmittal of the report to Congress, the Secretary will transmit to DOL and publish in the **Federal Register** the definition of the class and one of the following outcomes:

(1) The addition of the class to the Cohort; or

(2) The result of any action by Congress to reverse or expedite the decision of the Secretary to add the class to the Cohort.

§ 83.16 How can the Secretary cancel or modify a final decision to add a class of employees to the Cohort?

(a) The Secretary can cancel a final decision to add a class to the Cohort, or can modify a final decision to reduce the scope of a class added by the Secretary, if HHS obtains records relevant to radiation exposures of members of the class that enable NIOSH to estimate the radiation doses incurred by individual members of the class through dose reconstructions conducted under the requirements of 42 CFR Part 82.

(b) Before cancelling a final decision to add a class or modifying a final decision to reduce the scope of a class, the Secretary intends to follow evaluation procedures that are substantially similar to those described above for adding a class of employees to the Cohort. The procedures will include the following:

(1) Publication of a notice in the **Federal Register** informing the public of the intent of the Secretary to review the final decision on the basis of new information and describing procedures for this review;

(2) An analysis by NIOSH of the utility of the new information for conducting dose reconstructions under 42 CFR Part 82; the analysis will be performed consistently with the analysis of a petition by NIOSH under §§ 83.12(b)(2), 83.12(b)(3), 83.12(c)(2), and 83.12(c)(4);

(3) A recommendation by the Board to the Secretary as to whether or not the Secretary should cancel or modify its final decision that added the class to the Cohort, based upon a review by the Board of the NIOSH analysis and any other relevant information considered by the Board;

(4) Any additional procedures that the Secretary may deem appropriate, as specified in the notification provided for under paragraph (b)(1) of this section.

Dated: June 12, 2002.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

[FR Doc. 02–15824 Filed 6–20–02; 2:46 pm]

BILLING CODE 4160–17–P

[9] See 42 U.S.C. 7384l(14)(C)(ii).

Federal Register

Tuesday,

June 25, 2002

Part VII

Department of Education

Office of Special Education and Rehabilitative Services; Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.326X]

Office of Special Education and Rehabilitative Services; Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services invites applications for FY 2002 under the Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program. This program is authorized by the Individuals with Disabilities Education Act (IDEA), as amended. This notice provides closing dates, a priority, and other information regarding the transmittal of applications.

Please note that important fiscal information is listed in a table at the end of this notice.

Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities.

However, section 661(e)(2) of IDEA makes rulemaking procedures in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priority in this notice.

Purpose of Program: This program provides technical assistance and information that (1) support States and local entities in building capacity to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address goals and priorities for changing State systems that provide early intervention, educational, and transitional services for children with disabilities and their families.

Eligible Applicants: State educational agencies (SEAs) of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, outlying areas and Freely Associated States that have not been awarded grants under this competition (84.326X) in previous years. Eligible applicants are listed in the chart at the end of this notice. Freely Associated States are eligible to apply for funding to address system needs of Part B of IDEA only because they do not receive funding under Part C.

An entity eligible to apply for funding under section 661(b)(1) of IDEA may apply on behalf of an SEA or a Freely Associated State, but the entity must include a signed letter of endorsement from the director of the SEA or the appropriate official of the Freely Associated State.

The Assistant Secretary does not fund an application submitted by two agencies or entities on behalf of a single State, but encourages a joint application from an SEA and a State lead agency for Part C early intervention services in a State in which the SEA is not the State lead agency. An SEA may endorse the State lead agency as the State's applicant under the conditions in the *MAXIMUM AWARD* section of this notice.

Applications Available: June 26, 2002.

Deadline for Transmittal of Applications: July 29, 2002.

Intergovernmental Review: This program is subject to the requirements of Executive Order 12372 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.

This document provides early notification of our specific plans and actions for this programs.

Deadline for Intergovernmental Review: September 26, 2002.

Estimated Available Funds: $8 million.

Estimated Range of Awards: The chart at the end of this Notice lists the range for State basic grant awards for FY 2002.

Estimated Average Size of Awards: $375,000.

Maximum Awards: The chart at the end of this notice lists the amount of State basic grant awards for FY 2002. An applicant should note that it may apply for awards of differing amounts based on whether its application addresses (1) only the Part B program; or (2) both the Parts B and C programs.

The amounts for a State basic grant are based on the Office of Special Education Programs (OSEP) assessment that the minimal amounts necessary to address only Part B program needs and both Parts B and C program needs are $120,000 and $200,000 respectively. Calculation of amounts above the minimum levels was based on the 85 percent population rate and 15 percent poverty rate used in the calculation of Part B formula grant awards.

Outlying areas are eligible to receive $80,000 for addressing only Part B and $100,000 for addressing both Parts B and C. Because Freely Associated States participate only in the Part B program, a level of $80,000 has been established for addressing Part B only.

A State may not propose a budget in its application for the basic grant award that exceeds the amounts in this notice.

We will reject any application that purposes a budget exceeding the maximum amount listed on the chart for a single budget period of twelve months. The Assistant Secretary may reduce the grant award levels based on available funds.

Application for Enhancement Funds: OSEP may have additional funds available to support enhancements to the activities described in the projects approved for funding under this competition. A proposed project wishing to apply for enhancement funds may add up to five additional pages to Part III to describe activities that augment or complement those presented in the narrative section of its proposal for a basic grant. The applicant must place the additional pages in a *separate* ''Enhancement'' section located in Part III.

Enhancement activities may be an expansion of activities already described in the narrative or they may be new activities that would improve the quality of the previously proposed tasks; for example, additional staff training, the acquisition of expert technical assistance, or the improved involvement of parties affected by the project. In determining whether to fund enhancement activities, we base our decision on whether these activities represent an exceptional approach for meeting the priority.

If the proposed project applies for enhancement funds, we shall evaluate that application material separately from the application for the basic grant. We may award up to an additional 50 points to a proposal for enhancement funds. In order for us to fund the enhancement activities, application must receive: (1) A recommendation to fund the basic grant; (2) a recommendation to fund the enhancement activities; and (3) a score combining the basic grant points with the enhancement activity points that places the application in the funding range. We shall fund all approved basic grant applications before we fund any enhancement activities.

An applicant must prepare and include in Part II of the application a separate budget for the enhancement funds. This budget may not exceed 30 percent of the award amount listed for the basic grant (i.e., either 30 percent of the award for Part B only or 30 percent of the award for Parts B and C, depending on whether the application addresses only Part B or Parts B and C).

Other Application Requirements

To be considered for a combined Parts B and C award, a proposed project must describe in the application narrative (Part III): (1) how the SEA and State lead agency participated in developing the application; and (2) how the project will use the funding to address the needs of both the Parts B and C programs.

If an SEA endorses the State lead agency as the State's applicant, the proposed project must describe: (1) how the State lead agency and SEA collaborated to develop the application; and (2) how the State lead agency will use the award to address the needs of both the Parts B and C programs (e.g., developing or enhancing a data system that tracks the transition of toddlers from Part C to Part B services).

Estimated Number of Awards: 18.

Note: The Department is not bound by any estimates in this notice.

Project Period: September 30, 2002—September 30, 2003

Page Limits: Part III of an application submitted under this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application.

If your proposed project addresses only Part B, you must limit to the equivalent of no more than 20 pages for a basic grant and 25 pages for a basic grant with enhancements. If your proposed project addresses both Part B and Part C you must limit Part III to the equivalent of no more than 30 pages for a basic grant and 35 pages for a basic grant with enhancements. To determine the number of pages or the equivalent, you must use the following standards will be used:

- A ''page'' is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger and no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject any application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Additional Requirements

(a) The projects funded under this competition must make positive efforts to employ and advance in employment in project activities qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients under this competition must involve qualified individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under this competition must budget for a two-day Project Directors' meeting in Washington, DC.

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 Regulations (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 FY 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 Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program is one of the programs included in the pilot project. If you are an applicant under this 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 may access the electronic grant application for the 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.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99; (b) The selection criteria are drawn from the general selection criteria in 34 CFR 75.210. The specific selection criteria for this priority are included in the application package for this competition.

Priority

Under section 685 of IDEA and 34 CFR 75.105(c)(3) we consider only applications that meet the following absolute priority:

Absolute Priority—IDEA General Supervision Enhancement Grant (84.326X)

Background

Over the past six years, the Office of Special Education Programs (OSEP) has worked with interested parties to

modify its monitoring system in a way that will improve results for infants, toddlers, and children with disabilities, and their families. The interested parties OSEP has worked with have included SEAs, local educational agencies, parents and advocates. To ensure States' compliance with IDEA, OSEP has implemented a Continuous Improvement Monitoring Process (CIMP). An in-depth explanation of CIMP can be found at: *http://dssc.org/frc/monitor.htm.* (Click on manual100.doc to view in MS WORD or on manual100.pdf to view as a pdf file.)

Since the implementation of CIMP, SEAs and State lead agencies have endorsed the concept. All of the States have been involved in some phase of CIMP. Many States have begun the difficult processes of—

(1) Developing CIMP systems at the State level;

(2) Supporting the development of CIMP systems at the LEA level;

(3) Developing new data systems to support State and local CIMP systems; and

(4) Developing or enhancing State systems to identify and disseminate research-based promising practices in education and early intervention.

Providing the States with some initial funds to support their participation in CIMP, as well as to support unique State solutions and strategies developed in response to State-specific challenges identified through participation in CIMP, will reinforce OSEP's and the States' commitment to CIMP.

Absolute Priority

To be funded under this priority, a project must address one or more of the following four focus areas.

Focus 1: Developing or Enhancing a Process To Conduct a Self-Assessment

Background

SEAs and State lead agencies often require technical assistance to participate in the self-assessment phase of CIMP. This focus supports the development or enhancement of a process for statewide self-assessment of eligible applicants.

Focus

A project must develop or enhance a self-assessment process that is aligned with the self-assessment requirements of CIMP. The project is encouraged to address such tasks as:

(a) Identifying and implementing fiscally efficient processes to operate the CIMP Steering Committee;

(b) Identifying and obtaining data needed to evaluate the provision of early intervention or special education and related services or both;

(c) Identifying and using methods to determine data validity and reliability;

(d) Identifying and using valid and reliable techniques to collect data from parents, LEAs, advocates, service providers, and other parties interested in early intervention and special education and related services;

(e) Identifying and using valid and reliable techniques to analyze data; and

(f) Identifying and using decision making processes, based on data analysis, to determine whether IDEA regulatory requirements are: (1) In compliance; (2) in need of improvement; (3) out of compliance; or (4) exemplary.

Focus 2: Developing or Enhancing a Data System To Support the Needs of a CIMP at the State or Local Level

Background

The collection and use of valid and reliable data are cornerstones of CIMP. An analysis of State self-assessments has shown that many States, as well as their LEAs and local Part C agencies, lack the capacity to collect sufficient data to determine the impact of special education and early intervention services.

Focus

This focus supports the development or enhancement of a data system that is aligned with the data collection needs of CIMP and that will provide information about one or more of the following:

(a) Appropriate early intervention services or special education and related services or both.

(b) The effectiveness of the monitoring system of the SEA or State lead agency or both.

(c) The effectiveness of interagency coordination.

(d) The effectiveness of the State's dispute resolution system.

(e) The effectiveness of the State's system to identify children's eligibility for Part B or Part C services or both.

(f) Personnel shortages, including information related to the retention of qualified teachers and service providers.

(g) The system for exercising the general supervisory authority of the SEA or State lead agency or both.

(h) Efforts to address family needs and enhance families' capacities to meet the developmental needs of their children.

(i) Early intervention services in the natural environment or special education and related services in the least restrictive environment or both.

(j) The transition from Part C to Part B services.

(k) The involvement of parents.

(l) Transition of youth with disabilities from school to work or postsecondary education.

Focus 3: Developing or Enhancing a Process To Conduct Activities To Plan Improvement Based on CIMP

Background

The process of developing improvement plans is a critical component of CIMP. If done properly, improvement planning will result in improved special education and related services and early intervention or both. OSEP's analysis of State improvement plans in response to OSEP monitoring reports has shown that many States lack a cohesive data-based approach to developing their improvement plans. Many States have had trouble identifying and addressing the systemic barriers or factors that contributed to the practice that the State or OSEP has determined needs improvement.

Focus

This focus supports the development or enhancement of a process for planning improvement. The process must be aligned with the improvement planning phase of CIMP and should result in solutions that, for example—

(a) Identify systemic barriers to improved early intervention services or special education and related services or both;

(b) Address the systemic barriers to improved early intervention services or special education and related services or both;

(c) Include an evaluation component that demonstrates the positive impact of early intervention services or special education and related services or both;

(d) Include an evaluation component that demonstrates how changes in staff practice improve the provision of special education and related services or early intervention services or both;

(e) Are aligned or coordinated with the State's initiatives for general education reform; and

(f) Are consistent with and responsive to the findings of OSEP monitoring reports.

Focus 4: Developing or Enhancing State Systems To Identify, Disseminate, and Implement Promising Educational or Early Intervention Practices Based on Research

Background

OSEP has found that, to be fully effective, many improvement plans require a State technical assistance and dissemination structure to identify, disseminate, and implement promising

educational or early intervention practices based on research. In many States this structure is either nonexistent or lacks sufficient resources to be effective.

Focus

This focus supports the development or enhancement of a process for planning improvement. The process must be aligned with the improvement planning phase of CIMP and should result in solutions that, for example—

(a) Providing information about intervention and instructional practices based on research;

(b) Supporting the use of research-based approaches in instruction and the delivery of service in local schools and agencies;

(c) Serving as a conduit for the dissemination of research-based information among SEAs, State lead agencies, LEAs and Part C agencies, and national technical assistance centers; and

(d) Improving the efficiency of disseminating information by existing State technical assistance centers.

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. If you use a telecommunications device for the deaf (TDD) you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

You may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA 84.326X.

FOR FURTHER INFORMATION CONTACT: Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207.

If you use a TDD you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that contact. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

[Application Notice for Fiscal Year 2002]

CFDA No., name of program and eligible applicants	Maximum award for basic grants (per year)	
	IDEA Part B Only	IDEA Parts B &C
84.326X IDEA General Supervision Enhancement Grant:		
Arizona	$258,821	$361,440
California	926,237	1,152,935
Delaware	138,704	221,862
Florida	469,206	602,580
Georgia	336,846	451,135
Illinois	430,483	561,756
Indiana	239,673	342,256
Iowa	187,919	278,063
Kansas	186,718	277,324
Kentucky	215,486	310,537
Louisiana	253,489	352,447
Maine	145,677	229,734
Michigan	374,285	493,318
Mississippi	195,787	288,317
Missouri	250,159	351,199
Montana	141,279	225,078
Nevada	167,928	255,694
New Hampshire	147,833	231,870
New York	604,333	754,403
North Carolina	313,145	424,495
North Dakota	135,800	218,133
Ohio	392,013	515,946
Oklahoma	214,467	309,872
South Dakota	139,508	222,346
Tennessee	264,990	366,900
Texas	726,539	905,713
Vermont	135,453	217,610
Washington	259,434	363,345
West Virginia	161,412	247,552
Wisconsin	251,631	350,701
Wyoming	132,763	214,523
Guam	80,000	100,000
Northern Marianas	80,000	100,000
Virgin Islands	80,000	100,000
Federated States of Micronesia	80,000	NA

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Program Authority: 20 U.S.C. 1485.

Dated: June 19, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–16028 Filed 6–24–02; 8:45 am]

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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*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 1366/P.L. 107–190

To designate the United States Post Office building located at 3101 West Sunflower Avenue in Santa Ana, California, as the ''Hector G. Godinez Post Office Building''. (June 18, 2002; 116 Stat. 710)

H.R. 1374/P.L. 107–191

To designate the facility of the United States Postal Service located at 600 Calumet Street in Lake Linden, Michigan, as the ''Philip E. Ruppe Post Office Building''. (June 18, 2002; 116 Stat. 711)

H.R. 3789/P.L. 107–192

To designate the facility of the United States Postal Service located at 2829 Commercial Way in Rock Springs, Wyoming, as the ''Teno Roncalio Post Office Building''. (June 18, 2002; 116 Stat. 712)

H.R. 3960/P.L. 107–193

To designate the facility of the United States Postal Service located at 3719 Highway 4 in Jay, Florida, as the ''Joseph W. Westmoreland Post Office Building''. (June 18, 2002; 116 Stat. 713)

H.R. 4486/P.L. 107–194

To designate the facility of the United States Postal Service located at 1590 East Joyce Boulevard in Fayetteville, Arkansas, as the ''Clarence B. Craft Post Office Building''. (June 18, 2002; 116 Stat. 714)

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